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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 63

THE ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, PRESIDENT, ET AL., PETITIONERS,

vs.

O. E. SWAN, T. K. FAHERTY, R. A. KNOFF, ET AL.

No. 64

F. J. WILLIAMS, WILLIAM BISHOP, PAUL M. CARTER, ET AL., ETC., PETITIONERS,

vs.

O. E. SWAN, T. K. FAHERTY, R. A. KNOFF, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 18, 1946.

CERTIORARI GRANTED APRIL 22, 1946.

TRANSCRIPT OF RECORD

In the
United States Circuit Court of Appeals
For the Seventh Circuit

THE ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, PRESIDENT AND F. H. NEMITZ, SENIOR VICE-PRESIDENT; AND BROTHERHOOD OF RAILROAD TRAINMEN, A. F. WHITNEY, PRESIDENT AND S. R. HARVEY, ASSISTANT PRESIDENT,

Plaintiffs-Appellants,

No. 8714. *vs.*

O. E. SWAN, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD, L. O. MURDOCK, H. J. REESER, J. W. COX, E. W. FOWLER, R. A. WALTON, W. O. HOLMES AND J. M. FOX,

Defendants-Appellees.

F. J. WILLIAMS, WILLIAM BISHOP, PAUL M. CARTER, M. J. LEACH, AND FRED LEWIS, INDIVIDUALLY, AND AS MEMBERS OF THE NATIONAL RAILROAD ADJUSTMENT BOARD,

Defendants-Appellants,

No. 8715. *vs.*

O. E. SWAN, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD, L. O. MURDOCK, H. J. REESER, J. W. COX, E. W. FOWLER, R. A. WALTON, W. O. HOLMES AND J. M. FOX,

Defendants-Appellees.

U. S. C. C. A. - 7
FILED
MAY 7 - 1945
CLERK

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

TRANSCRIPT OF RECORD FILED NOV. 13, 1944.
PRINTED RECORD.

In the
United States Circuit Court of Appeals
For the Seventh Circuit

THE ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, PRESIDENT AND F. H. NEMITZ, SENIOR VICE-PRESIDENT; AND BROTHERHOOD OF RAILROAD TRAINMEN, A. F. WHITNEY, PRESIDENT AND S. R. HARVEY, ASSISTANT PRESIDENT,

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Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No.

THE ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, PRESIDENT AND F. H. NEMITZ, SENIOR VICE-PRESIDENT; AND BROTHERHOOD OF RAILROAD TRAINMEN, A. F. WHITNEY, PRESIDENT AND S. R. HARVEY, ASSISTANT PRESIDENT,

Petitioners,

8714 *vs.*

O. E. SWAN, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD, L. O. MURDOCK, H. J. REESER, J. W. COX, E. W. FOWLER, R. A. WALTON, W. O. HOLMES AND J. M. FOX,

Respondents.

F. J. WILLIAMS, WILLIAM BISHOP, PAUL M. CARTER, M. J. LEACH, AND FRED LEWIS, INDIVIDUALLY, AND AS MEMBERS OF THE NATIONAL RAILROAD ADJUSTMENT BOARD,

Petitioners,

8715 *vs.*

O. E. SWAN, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD, L. O. MURDOCK, H. J. REESER, J. W. COX, E. W. FOWLER, R. A. WALTON, W. O. HOLMES AND J. M. FOX,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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1 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of July (it being the 3rd day thereof) in the year of our Lord One Thousand Nine Hundred and Forty-Four and of the Independence of the United States of America the 168th year.

Present:

Hon. John P. Barnes, District Judge,
Hon. Philip L. Sullivan, District Judge,
Hon. Michael L. Igoe, District Judge,
Hon. William J. Campbell, District Judge,
Hon. Walter J. LaBuy, District Judge,
Hon. Elwyn R. Shaw, District Judge,
Hon. William H. Holly, District Judge.
Roy H. Johnson, Clerk.
William H. McDonnell, Marshal.

Thursday, July 20, 1944.

Court met pursuant to adjournment.

Present: Hon. William H. Holly, Trial Judge.

2 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

The Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President, *vs.* E. W. Fowler, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis,	Civil Action No. 3788.

COMPLAINT.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Petition for Declaratory Judgment in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the twelfth day of January, A. D. 1942:

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—3788) * *

PETITION FOR DECLARATORY JUDGMENT.

The Plaintiffs, The Order Of Railway Conductors Of America, a voluntary unincorporated association, by H. W. Fraser, President, and F. H. Nemitz, Senior Vice President, and Brotherhood Of Railroad Trainmen, a voluntary unincorporated association, by A. F. Whitney, President, and S. R. Harvey, Assistant President, represent unto the court that this Petition for a Declaratory Judgment and the other relief, is filed on behalf of the members of the

said plaintiff's railroad labor organizations against the National Railroad Adjustment Board, First Division, and thereupon allege:

4 1. Plaintiff, Order Of Railway Conductors Of America, a voluntary unincorporated association, is a standard railroad labor organization, national in scope, with its chief executive offices located in the City of Cedar Rapids, State of Iowa; H. W. Fraser is the duly elected, qualified and acting President of said organization, and F. H. Nemitz is the duly elected, qualified and acting Senior Vice President of said plaintiff organization.

Plaintiff, Brotherhood Of Railroad Trainmen, a voluntary unincorporated association, is a standard labor organization, national in scope, with its chief executive offices located in the City of Cleveland, State of Ohio; A. F. Whitney is the duly elected, qualified and acting President of said organization, and S. R. Harvey is the duly elected, qualified and acting Assistant President of said plaintiff organization.

The plaintiffs bring this action on behalf of and as representative of all of the members of said organizations and in behalf of all other persons who may elect to associate themselves with the plaintiffs, as well as in behalf of all others who may be similarly situated, whether members of said plaintiff organizations or not.

2. Defendants are members of the First Division of the National Railroad Adjustment Board, an administrative or quasi-judicial Board created by the Railway Labor Act, as amended June 21, 1934, (c. 691, 48 Stat. 1185, 45 U. S. C. Secs. 151-163); and particularly Section 3 of

5 said Act of June 21, 1934; the First Division is a Division of said Board created by and organized under sub-section (h) of said Section 3, and maintains its headquarters and conducts its meetings and sessions in the City of Chicago, State of Illinois, in accordance with the provisions of said Act of Congress.

The membership of the said First Division consists of ten members, five of whom are selected and designated by the carriers and five of whom are selected and designated by the railroad labor organizations, national in scope, of the employees; that said First Division has jurisdiction over disputes involving train and yard-service employees of carriers, that is, engineers, firemen, hostlers and outside hostler helpers, conductors, trainmen and yard-service employees.

Defendants are and at all of the times mentioned herein were, the duly appointed, qualified and acting members of said National Railroad Adjustment Board, First Division, and individually and collectively hold said offices under and by virtue of the Act of the Congress aforesaid; and as members of said Division the defendants maintain headquarters and conduct hearings, hold meetings and sessions in said City of Chicago, State of Illinois, as required by said Act of Congress. Said defendants at all times herein mentioned and herein referred to, are and have been the regular or permanent members of said National Railroad Adjustment Board, First Division, duly appointed and qualified under and pursuant to sub-section (h) of said Section 3 of the Railway Labor Act.

6 3 This is a suit of a civil nature which arises under the Constitution and laws of the United States, under the Act of Congress of May 20, 1926, as amended June 21, 1934, (c. 691, 48 Stat. 1185, 45 U. S. C. Secs. 151-163) and commonly referred to as the Railway Labor Act, and the laws of the United States relating to interstate commerce, and is instituted pursuant to the provisions of the said Railway Labor Act and the laws of the United States relating to interstate commerce, and also under Judicial Act Section 274d(1), 28 U. S. C. A. Section 400(1), and also under the general equity jurisdiction of this court, by reason whereof this court has jurisdiction of this suit.

4. Heretofore, and on the 11th day of October, 1938, there was referred to the said National Railroad Adjustment Board, First Division, by petition of employees or groups of employees of the Great Northern Railway Company, a corporation, represented by the Order of Railway Conductors of America, plaintiff herein, a certain dispute and claim of V. E. Benjamin and M. L. Nagle, Yardmasters, otherwise known as yard-service employees, growing out of alleged grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, which dispute was docketed October 24, 1938, as No. 6404 in the official records of the said First Division of the National Railroad Adjustment Board. Attached hereto, marked Exhibit "A" and made by this reference a part hereof, is a copy of the ex-parte sub-

7 mission filed on behalf of said yardmasters in said dispute by said plaintiff organization. Said dispute prior to being referred as aforesaid by petition of employees or groups of employees represented by the plain-

tiff herein to the National Railroad Adjustment Board, First Division, had been handled in the usual manner up to and including the chief operating officer of the Great Northern Railway Company designated to handle such disputes and such handling had been completed and nothing on the date of reference to the said First Division remained or at any time since has remained or now remains to be done in order to complete such handling in the usual manner up to and including such chief operating officer, all as contemplated and provided by sub-section (i) of said Section 3 of the Railway Labor Act.

That on the 21st day of October, 1938, the Great Northern Railway Company, in Docket No. 6404 of the said First Division, filed its ex-parte submission wherein was protested the acceptance, hearing of or rendition of any Award in said dispute by the said First Division on the ground that the jurisdiction over the said dispute was in the Fourth Division of the said National Railroad Adjustment Board, whereupon the carrier members of the said First Division, defendants herein, declined and have ever since refused to set said dispute as contained in said docket for hearing.

5. Heretofore, and on the 4th day of January, 1941, there was referred to the said National Railroad Ad-
8 justment Board, First Division, by petition of the employees or groups of employees of the Southern Pacific Company (Pacific Lines), a corporation, represented by the Brotherhood of Railroad Trainmen, a plaintiff herein, a certain dispute and claim of W. W. May, Assistant Yardmaster, otherwise known as a yard-service employee, growing out of alleged grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions, which dispute was docketed the 26th day of March, 1941, as No. 12295 in the official records of the said First Division of the National Railroad Adjustment Board. Attached hereto, marked Exhibit "B" and made by this reference a part hereof, is a copy of the ex-parte submission filed on behalf of said yardmaster in said dispute by said plaintiff organization. Said dispute, prior to being referred as aforesaid, by petition of employees or groups of employees represented by the plaintiff herein to the National Railroad Adjustment Board, First Division, had been handled in the usual manner up to and including the chief operating officer of the Southern Pacific Company (Pacific Lines) designated to handle such disputes and such handling had been completed and nothing

on the date of reference to said First Division remained or at any time since has remained or now remains to be done in order to complete such handling in the usual manner up to and including such chief operating officer, all as contemplated and provided by sub-section (i) of said Section 3 of the Railway Labor Act.

9 That on the 24th day of March, 1941, the Southern Pacific Company (Pacific Lines), in said Docket 12295 of the said First Division, filed its ex-parte submission wherein was protested the acceptance, hearing of or rendition of any Award in said dispute by the said First Division on the ground that jurisdiction over disputes between carriers and yardmasters was in the Fourth Division of the National Railroad Adjustment Board, whereupon the carrier members of the said First Division, defendants herein, declined and have ever since refused to set said dispute as contained in said Docket for a hearing.

6. That said Fourth Division of said National Railroad Adjustment Board created under Section 3, subdivision (h) of said Railway Labor Act is composed of six members, three of whom are selected by the carriers and three by maritime labor organizations, national in scope, of the employees. That said Fourth Division has jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water and all other employees of carriers over which jurisdiction is not given to the First, Second and Third Divisions of said National Railroad Adjustment Board.

That the labor members of said Fourth Division at the times mentioned herein were officers of the national maritime labor organizations and at no time executive members of any of the standard railroad labor organizations appointing officers thereof as labor members of the First, Second and Third Divisions of the National Railroad

10 Adjustment Board, as provided for in Section 3(h) of said Railway Labor Act.

7. That on or about August 28, 1941, the carrier members of the said First Division of the National Railroad Adjustment Board addressed to the labor members of said First Division a communication attached hereto, marked Exhibit "C" and made by this reference a part hereof, wherein said carrier members informed the said labor members that they would not participate in any consideration of the merits in Dockets 6404 and 12295 and related

dockets, and proposed to the said labor members that the aforesaid docket and related dockets be filed with the Fourth Division of the National Railroad Adjustment Board and that said Fourth Division hear, determine and enter an Award or Awards thereon; that the said carrier members of said First Division declined and still refuse to set said Docket 6404 and Docket 12295 for hearings and to enter Awards thereon.

That in and by said Exhibit "C" the carrier members of said First Division refer to a decree entered in this court, chancery No. 16031, wherein the Fourth Division of the National Railroad Adjustment Board was directed and commanded to take jurisdiction of three individual disputes of yardmasters and to render awards thereon. That the terms and provisions of said decree applied only to the individual disputes as set forth in petition for mandamus according to the allegations of fact set forth in said petition. That the provisions of said decree entered as aforesaid, did not apply to, nor was it directed against, the defendants herein or any other Division of said National Railroad Adjustment Board, nor did said decree enjoin any other Division of said National Railroad Adjustment Board from exercising the jurisdiction conferred on said respective Divisions by Section 3(h) of the Railway Labor Act.

The defendants herein, members of the First Division, have never regarded said decree as having any binding effect upon or control or command of or as a direction to the members of the First Division, or any binding effect upon or control or command of or a direction to any Referee selected by the National Mediation Board to sit with the said First Division as a member thereof in Awards rendered by the said First Division in disputes involving claims of yardmasters as yard-service employees.

8. That in Docket 5944, Award 3609, rendered March 6, 1939, a coppy of which is attached hereto and marked Exhibit "D", rendered by the First Division without a Referee sitting as a member thereof, claims of yardmasters, as set forth in the ex-parte submission, sustained the jurisdiction of the First Division to hear, determine and render Awards on said disputes.

That in Docket 6960, Award 4077, rendered August 24, 1939, a copy of which is attached hereto and marked Exhibit "E", the First Division, with Dexter M. Keezer, a Referee, sitting as a member thereof, sustained the juris-

diction of the First Division to hear, determine and render an Award in a dispute concerning claims of a yardmaster against the Southern Pacific Company (Pacific Lines).

12 That in Docket No. 6549, Award 4150, rendered September 15, 1939, a copy of which is attached hereto and marked Exhibit "F", the First Division, with Frank M. Swacker, a Referee, sitting as a member thereof, sustained the jurisidiction of the First Division to head, determine and render an Award in a dispute concerning claims of a yardmaster against the Northern Pacific Terminal Company of Oregon.

That in Docket No. 4504, Award 2712, rendered March 31, 1938, a copy of which is attached hereto marked Exhibit "G", the First Division, with Frank M. Swacker, a Referee, sitting as a member thereof, sustained the jurisdiction of the First Division to hear, determine and render an award in a dispute concerning claims of a yardmaster against the Denver and Rio Grande Western Railroad Company.

9. That the duties of yardmasters, employed exclusively by rail carriers, consist of directing the work of the several classes of employees employed in a rail carrier yard, including engine crews, foremen, conductors, helpers, brakemen, engineers and firemen, switchtenders, yard clerks, car inspectors and helpers, track maintenance forces, road train and engine crews in train movement to and from rail yard and hostlers and helpers in movement of light engines to and from said rail yard. That the duties of said yard-

13 masters are confined to the operation of rail carriers and are in direct cooperation and operation with the duties performed by rail carrier employees in train, engine and yard-service, over which the First Division of the National Railroad Adjustment Board has exclusive jurisdiction, as provided in Section 3(h) of the Railway Labor Act.

10. Plaintiff further alleges that the rendition of Award 5944, Docket 3609; Award 4077 in Docket 6960; Award 4150, Docket 6549 and Award 2712, Docket 4504, by the First Division, established the jurisdiction of said First Division to hear disputes involving yardmasters as yard-service employees and that no further remedies provided by the Railway Labor Act are available to the plaintiffs under said Act and that all the requirements of said Act have been met by said plaintiffs for the hearing of said disputes, set forth in Exhibit "C" and for the rendition of

Awards thereon and that plaintiffs have no adequate remedy at law as against the said acts of the First Division which have been and are being committed or against the said unlawful acts of the defendants which they believe and aver the First Division proposes to commit in the future.

That as to the relief hereinafter prayed for the defendants will suffer no injury whatsoever from the granting of the same but that the plaintiffs, and the members thereof, will suffer great and irreparable injury if said relief shall be refused.

That the National Mediation Board and the members thereof in appointing Referees to sit with the First
14 Division members thereof, in disputes involving yardmasters, caused to be definitely established in said First Division jurisdiction to hear, determine and render Awards involving disputes of yardmasters as yard-service employees and that said National Mediation Board and its members are unable to afford said plaintiffs and its members further protection or any additional relief, and that said plaintiffs have exhausted all further remedies provided by the Railway Labor Act.

11. That by reason of the conflicting claims between the carrier members and the labor members of the First Division of the National Railroad Adjustment Board, plaintiffs, as representative of a certain group of employees, namely, yardmasters and yard-service employees are unable to secure a hearing on the disputes as set forth in Exhibit "C" and plaintiffs and their members are accordingly being deprived of the rights, privileges and remedies guaranteed to the employees of carriers for the hearing of disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions before said First Division, as provided for in Section 3(h) of the Railway Labor Act.

Wherefore, plaintiffs demand that the court adjudge:

1. That the services performed by yardmasters are rendered in conjunction with and as necessary incidents to services performed by other yard-service employees of
15 carriers and have been so regarded by the First Division of the National Railroad Adjustment Board and by Referees selected by the National Mediation Board to sit with the First Division as members thereof.

2. That the First Division of the National Railroad Ad-

justment Board has exclusive jurisdiction of disputes involving yardmasters as yard-service employees within the terms and definitions contained in Section 3(h) of the Railway Labor Act.

3. That the First Division of the National Railroad Adjustment Board is not bound by the provisions of the decree entered by this court in chancery case No. 16031.

4. That the plaintiff may be given such other, further and general relief as may be proper in the premises.

V. Craven Shuttleworth,
1115 Merchants National Bank Building,
Cedar Rapids, Iowa,

W. H. Endle,
Brotherhood of Railroad Trainmen Building,
Cleveland, Ohio,

Everett L. Gordon,
100 West Monroe Street,
Chicago, Illinois,
Attorneys for Plaintiffs.

16 State of Iowa } ss.
County of Linn }

F. H. Nemitz, being first duly sworn according to law, deposes and says that he is one of the plaintiffs in the above entitled action; that he is the Senior Vice President of the plaintiff Order of Railway Conductors of America; that he is fully authorized to make this verification on behalf of said Order of Railway Conductors of America and does make the same on behalf of said plaintiff as well as on his own behalf; that he has read the above Complaint and knows the contents thereof; that he has personal knowledge of the facts and things set forth therein and that the allegations contained therein are true.

F. H. Nemitz.

Subscribed and sworn to before me by the said F. H. Nemitz, this 30th day of December, 1941.

S. M. Hoffner,
Notary Public in and for Linn County, Iowa.

(Seal)

17 EXHIBIT "A".

NATIONAL RAILROAD ADJUSTMENT BOARD

First Division

Order of Railway Conductors

vs.

Great Northern Railway Company

Ex Parte Submission

Employes' Statement of Claim:

Claim of Yardmasters V. E. Benjamin and M. L. Nagle for loss of earnings by reason of reduction of force at Kelly Lake, Minn., November 7, 1937.

Statement of Facts:

November 7, 1937, Carrier discontinued position of yardmaster at Kelly Lake, Minn., paying $288.20 per month. Yardmaster V. E. Benjamin, who occupied that position, thereupon exercised seniority to displace junior yardmaster M. L. Nagle at Superior, Wis., which position paid $278.20 per month. Yardmaster Nagle thereupon exercised seniority as a switch foreman, which position paid $7.58 per day.

Employes claim that position of yardmaster at Kelly Lake should not have been abolished, and claim difference in earnings of the position from which displaced and actual earnings upon position thereafter occupied.

Position of Employes:

Request is made that Yardmasters Benjamin and Nagle be paid for loss of earnings sustained as outlined in Statement of Facts until they are restored to their former or equal earnings.

Request is based on violation of Article 5 of the agreement between the Order of Railway Conductors, representing the yardmasters, and the Railway Officers, effective April 1, 1937, which reads as follows:

"No change in the title of yardmasters of any grade will be made for the purpose of changing the rate of pay."

During the heavy movement of iron ore throughout the summer of 1937, three shifts of yardmasters were maintained at Kelly Lake, until on or about October 25, 1937, at which time two of them were withdrawn, which is not disputed, as there was a substantial reduction in business at that time, which left little or no duties as yardmaster to be performed for the two yardmasters withdrawn. However, the withdrawal of Benjamin November 7 was not justified, as there was then and thereafter 8 hours' work as yardmaster in a spread of 9 hours, which service has since that time been performed by a clerk and others who hold no rights as yardmasters and who are not paid yardmaster rates of pay, which is in violation of Article V of the agreement herein quoted. During the period following November 7, there were 4 to 5 transfer crews operating in and out of Kelly Lake yard, all of whom performed switching and which required supervision of someone acting in the capacity of yardmaster, which supervision was performed by persons not holding seniority as yardmasters and not receiving yardmaster's rates of pay.

During the summer of 1938 there was employed at Kelly Lake, one chief and two assistant chief dispatchers and three trick dispatchers, one yard clerk and one yard switch crew—the latter in hours 10 A. M. to 6 P. M. The chief and assistant chief dispatchers, yard clerk, and switch foreman all took turns at doing the yardmaster's work.

Throughout the summer there were as high as nine transfer crews operating throughout the week; also No. 421 and return extra operated in and out of Kelly Lake daily except Saturday. There was also an average of four to five road crews operating in and out of that terminal, all of whom performed switching and there were no yardmasters whatever employed, and since the withdrawal of Yardmaster Benjamin November 7, 1937, including the ore season throughout the summer of 1938.

I am attaching hereto Exhibits "A" to "H", inclusive, which disclose that this controversy has been going on during 1933 and thereafter. Chairman J. P. Donovan, shown in the correspondence, was then Chairman of the Great Northern yardmasters (Company Union), who held an agreement with the Management.

With reference to Article VII, Paragraph "C" in Ex-

hibit "B" of the agreement then in effect, which reads as follows:

"No change in the title of yardmasters of any grade will be made for the purpose of reducing the rates of pay of positions unless there is a change in the extent of their duties or responsibilities."

Paragraph "C", Article II, as mentioned in Exhibit "H" of the agreement then in effect, reads:

"Where one or two shifts are employed, a one-hour meal period may be designated by the Management. Where there consecutive shifts are employed to cover a 24-hour period, no meal period will be designated."

The conditions complained of in the correspondence shown as Exhibits "A" to "H", inclusive, during the years 1933 and 1934, exist at the present time.

Article IV, Paragraph (b) of the Yardmasters' Current Agreement reads:

"Yardmasters will hold seniority in all yards in their own seniority district, allocated as follows:" (and seniority districts are listed following the rule quoted.)

The principle in this case is sustained in National Railroad Adjustment Board, First Division, Awards 2623, 2861 and 5259.

All data in support of employes' position in connection with these claims has been presented to the Carrier and is made a part of the particular question in dispute.

Oral hearing before the Board is desired.

Order of Railway Conductors,
A. E. Landis,
General Chairman.

October 18, 1938.

19 EXHIBIT "A". July 28, 1933

Mr. F. J. Gavin
General Manager
Great Northern Railway
Duluth, Minnesota

Dear Sir:

Your letter of July 24 regarding yardmasters' positions at Kelly Lake. We are very sorry that you cannot see the yardmasters' angle in this case, as we still feel that we are being discriminated against in the Kelly Lake case.

However, if you will grant us an interview and let us present our side of the case we are sure we will be given due consideration.

Yours truly,
(Signed) J. P. Donovan,
Chairman.

cc—W. S. Dunn

20 EXHIBIT "B". August 8, 1933

Mr. F. J. Gavin
General Manager, G. N. Ry.,
Duluth, Minnesota

Dear Sir:

Due to pressure brought by yardmasters pertaining to treatment we are receiving in the Kelly Lake controversy I am again asking you to consider this case.

Your letter under date of July 24 you say you cannot see what you would do with a yardmaster until it is necessary to put on some switch power. I will go back to March, 1918. V. E. Benjamin was sent to Kelly Lake to relieve a yardmaster and was retained at Kelly Lake as yardmaster the year around. A chief dispatcher was also retained year around, balance of forces from both offices laid off at expiration of ore season. This also included switch power. This arrangement was kept in effect for quite a few years, then it was found feasible to work trick dispatchers year around at Kelly Lake giving them main line from Swan River to Grand Forks in addition to the Range. The day yardmaster was still retained at Kelly Lake year around,

his hours being shifted to suit business during winter months.

At the beginning of ore season each year a night yardmaster and an assistant chief dispatcher went to work at about the same time. You say our contention is that the chief dispatcher and assistant chief dispatchers are doing yardmaster's work. We still claim that this work is being done by someone and it is being done by dispatchers from what we learn and know.

The duties of a yardmaster at Kelly Lake: Be on the job in the morning and evening when transfer crews are starting to work to see that they get their cabooses and empties and get out of yard without being delayed, the handling of the crew boards, cinder pits, rips, coal chute, marking up of time freights and transfers, handling merchandise, etc. The call boy has always been under the supervision of the yardmaster. He also informs transfer crews where to pull and has numerous other duties all confined to yard work. There isn't any question in our minds but what there is a move on by a certain element to absorb the yardmaster duties at Kelly Lake.

Two years ago last fall as soon as ore business ceased it was the intention to pull the yardmaster's position off, a position that had been retained, how long previous to 1918 I did not investigate. At that time I protested this move to you and you decided in our favor. You informed us at the time due to business conditions the move was for economy and still a clerk was retained at Kelly Lake during that winter for the first time.

21 Last fall this same argument came up and the yardmaster who had worked year around since 1918 was pulled off and this dispatcher's clerk was to be retained with his hours changed to that of the yardmaster. I protested this arrangement, if you remember, and the clerk was also pulled off, leaving the dispatchers handle work at Kelly Lake last winter. Knowing that business was very poor, and due to wire conditions between Grand Forks and Superior trick dispatchers had to be retained at Kelly Lake, we let this matter drop. Now that business has picked up we find that we are closed out entirely.

We are satisfied that you are, and more or less have to go along with recommendations you receive from your subordinate officers when force reductions or additions are required. At Kelly Lake with exception of yardmasters and a few minor clerks there is a full force of dispatchers, three

chief, three trick men and a relief man making seven men, also a chief dispatcher's clerk and not one yardmaster. Our contention is that a yardmaster could have fitted in, say, one yardmaster, one assistant chief, hours to suit business, until more are needed. There is, as you know, only a chief and an assistant chief at Superior. The chief dispatcher does not come under the hours of service laws and the assistant chief and yardmaster could be worked through a spread, if necessary to cover busiest part of day or night. Under this arrangement we are confident that business would not be hampered and I cannot see where a complaint could be registered from any group.

We claim a violation under Article VII, Paragraph C that duties and responsibilities of a yardmaster are still at Kelly Lake.

Yours truly,
(Signed) J. P. Donovan,
Chairman.

cc—W. S. Dunn

22 EXHIBIT "C".

Duluth, Minnesota
August 11, 1933

Mr. J. P. Donovan
Yardmaster
Superior, Wisconsin

Dear Sir:

Referring to your letter August 9.

Spent two days at Kelly Lake recently and after investigating the matter thoroughly cannot see why the Great Northern Railway Company should be required to place a yardmaster at Kelly Lake until there is something there for the yardmaster to do. For instance yesterday we ran five trains of ore and three of them moved via Gunn, the ore not going into Kelly Lake yard at all. Conditions have changed entirely on the range and when there is sufficient amount of yard work to justify a yardmaster you can depend on it that we will employ a yardmaster; that is to say, when the Railway Company feel it would be economical to have this supervision it will be put on.

Yours truly,
(Signed) F. J. Gavin,
General Manager G. N. Ry.

23 EXHIBIT "D".

September 18, 1933

Mr. J. C. Rankine
Asst. to Vice Pres.
Great Northern Ry.
St. Paul, Minnesota

Dear Sir:

Referring to our conversation your office, relative to the positions of yardmasters at Kelly Lake.

I am making this appeal after taking the matter up through proper channels.

Our contentions are that yardmasters are not being given due consideration in this controversy. There has been one yardmaster retained at Kelly Lake year around, how long before 1918 I did not investigate. And at the beginning of ore season each year, two additional yardmasters were put on when business warranted. The ore business in 1932 did not warrant more than one yardmaster it was claimed, and at the expiration of ore season that year, this yardmaster was pulled off, leaving the duties and responsibilities of a yardmaster in other hands. This arrangement is still in effect at Kelly Lake.

We hereby protest this arrangement, claiming a violation under Article VII paragraph C of Agreement between the Great Northern Railway Company and its yardmasters.

Yours truly,
(Signed) J. P. Donovan,
Chairman, G. N. Yardmasters.

24 EXHIBIT "E".

Copy

St. Paul, Minnesota
September 28, 1933

Mr. J. P. Donovan, Chairman
Great Northern Yardmasters Assn.
Superior, Wisconsin

Dear Sir:

Your letter of September 18 regarding Kelly Lake.

You have not done what I suggested to you in conference as necessary for consideration of this particular grievance. I asked you to specify just what yardmasters' duties or responsibilities had been assigned to other employes and to what employes.

Yours very truly,
(Signed) J. C. Rankine,
Asst. to Vice Pres.,
G. N. Ry.

25 EXHIBIT "F".

Copy

October 3, 1933

Mr. J. C. Rankine
Asst. to Vice Pres.
Great Northern Railway
St. Paul, Minnesota

Dear Sir:

Your letter Stpt. 28. The duties and responsibilities of yardmaster at Kelly Lake are and have been up to the time yardmaster was pulled off, as follows:

Supervise movements of all yard engines, transfers, time freights and locals in yard.

Make out lists for switching.

Keep track of preference ore and line trains up accordingly.

Weigh cars and check cars, no car checkers employed.

Handle train board which fluctuates very much and re-

quires all told one hour or one and one half hours each day in ore season.

Supervise call boys. Held responsible for any improper calling of crews.

Office duties, correspondence, etc.

Switch (PBX) board is in yard office and yardmaster is responsible for service.

As in all yard work, watch Repair Tracks for delayed cars. Also check delayed company material cars.

Order company coal and see placed right at chute.

Watch cinder pits.

Winter same work with the exception of no ore and less movements but yardmaster manifests trains and calls most of the crews.

A chief dispatcher's chief clerk is doing 95% of the work formerly done by the yardmaster. He works every day of the month using Sunday to catch up on a joint trackage statement. Week days his work is almost entirely confined to yardmasters duties which I have mentioned above. Also there is a manifest clerk and the third operator on at Kelly Lake this year. These two positions were not on last year. It is very apparent that jobs were juggled to eliminate a yardmaster.

The difference in the daily rate of this chief dispatcher's clerk and a yardmaster is so slight that it does not warrant the consolidation of a chief dispatcher's clerk and a yardmaster's duties which are far in excess of the duties performed by this clerk while working solely in dispatcher's office. Up to this spring this clerk never at any time performed yard clerk's duties, let alone yardmaster's duties.

If this move was made for economy and if consolidation of positions were necessary we claim in justice to yardmasters, that the dispatchers could have been given the work of this clerk which consists mainly of a joint trackage statement which is a monthly report and the mine report which consumes not over thirty minutes a day, reports requiring not over one and one half hours in the business part of the season.

Yours truly,

(Signed) J. P. Donovan,
Chairman.

cc.—W. S. Dunn.

26 EXHIBIT "G".

Copy

May 17, 1934

Mr. J. C. Rankine
Asst. to Vice Pres.
Great Northern Ry.
St. Paul, Minnesota

Dear Sir:

My letter under date of October 3, 1933 re yardmasters' position at Kelly Lake.

The practice of using a clerk to perform the duties of yardmaster at Kelly Lake is still in effect and we would appreciate a decision in this matter.

Yours truly,
(Signed) J. P. Donovan,
Chairman.

cc—W. S. Dunn.

27 EXHIBIT "H".

Copy

May 18, 1934

Mr. J. C. Rankine
Asst. to Vice Pres.
Great Northern Railway
St. Paul, Minnesota

Dear Sir:

Following are several cases in the yards where I recently visited, similar to the one at Kelly Lake.

At Williston a yardmaster working 7 AM to 4 PM, a clerk 4 PM to 1 AM, a yardmaster 10 PM to 7 AM. Switch engines working 24 hours daily. Note clerk handling yard from 4 PM to 10 PM, six hours.

At Minot a yardmaster working from 8 AM to 5 PM, a clerk works from 4 PM to midnight, a yardmaster working 9 PM to 6 AM. The clerk on 4 PM shift handles yard and switch engines from 5 PM to 9 PM and clerk handles yard and switch engine from 6 AM to 8 AM. From four to six engines working through the twenty-four hours.

Breckenridge, Willmar, Whitefish and Harve the same conditions as Minot and Williston.

I saw a bulletin at Minot for bids on a clerk's position at Breckenridge. This bulletin stated that applicant must be able to handle yard.

St. Cloud has one yardmaster working and he is called at times to come to yard after serving his nine hours. Also called to yard previous to his starting time, on different occasions and does not receive any compensation.

I informed you verbally of this condition some time ago and you promised to look into it and let me know as to your findings. You will note that in each case in yards where 24 hour supervision is required and switch engines are worked 24 hours a day a yardmaster has been pulled off, the two remaining yardmasters made to work thru a spread of 9 hours and a clerk to fill in the balance of time.

We are not asking for a thing that we are not entitled to but we do feel that where a clerk is performing the duties of a yardmaster a yardmaster should be retained. The Superintendents have taken advantage of paragraph (c) Article 11 of our schedule by pulling off a yardmaster and making the remaining two work thru a spread of 9 hours which means nothing more than working 9 hours as not in a single case has a yardmaster been given a designated meal period, this leaving him responsible for every minute of the 9 hours.

Another thing, the yardmasters were instructed to double up in order to take their vacations. We did not take exceptions in this matter due to the small volume of business in the past two or three years and we were more than willing to do our share. Others were not asked or made grant any concession and we are losing faith, due to the fact that we are not granted any consideration in our complaints.

(Signed) J. P. Donovan,
Chairman.

cc—W. S. Dunn.

28 To The Members Of The National Railroad Adjustment Board:

Rebuttal, Docket Case 6404

Order of Railway Conductors

vs.

Great Northern Railway

Claim Of Yardmasters V. E. Benjamin And M. L. Nagle.

In the position taken by the Carrier in its submission to the First Division of the Board it has said the case is not properly before the First Division, whereas employes do not concur in that opinion.

In the Railway Labor Act as amended and approved April 10, 1936, under head of First Division is listed, in part:

"Yard Service Employes"

whereas no such mention appears in list of cases coming under the jurisdiction of Division 4 of the Board.

On Page 13 of the agreement between the Carrier and the Order of Railway Conductors, representing yardmasters, appears, in part, under head of "Monthly Rates of Pay":

"Kelly Lake yardmasters $288.20
Night yardmasters ..... 278.20"

which is quite conclusive indication that it was the intention of the Carrier as well as the employes' representatives, when the agreement was made, that yardmasters would be employed at Kelly Lake instead of their duties being performed by other employes.

During the summer of 1937 the Carrier employed three yardmasters at Kelly Lake, but withdrew two of them October 25 and the remaining one November 7, 1937, and there has been no yardmaster employed thereafter to the present time, October 1, 1940, and during those years yard engines were employed. During the ore season of 1940, three shifts of yard engine service are being employed, and, taking into account the traffic handled during the various seasons of the year as shown in "Position of Employes", the dispensing with the services of yardmasters

is apparently a retaliation on the part of the Carrier to the employes' complaints and final appeal to the Board, and the work has, since the withdrawal of yardmasters in 1937, been handled by train dispatchers, a car clerk and other employes. During the ore seasons more tonnage has been handled in and out of Kelly Lake than any terminal on the Great Northern System, without the employ of a yardmaster, and the clasifying of the ore at Kelly Lake to provide the proper grades of ore in the various trains to meet the requirements of loading of the boats at Allouez docks renders necessary switching of the cars at Kelly Lake, which should be supervised by yardmasters instead of other employes.

There are at the present time 16 transfer crews handling empties each 24 hours from Kelly Lake and distributing to the mines and bringing the loads back into Kelly Lake for assemblage into proper trains for movement from there to Allouez Docks; and there are 14 crews hauling the ore from Kelly Lake to Allouez and returning the empties to Kelly Lake in the movement of an average of 10 trains of 180 loads each day.

During winter months, when one yardmaster had, prior to 1937, been employed, his assigned hours were 4 A.M. to 1 P.M. His usual routine of duty was to be at the office to meet 421 from Superior and direct the switching operations for 3 transfer crews, all of whom secured cars from Train 421, as well as cars from the yard, one of them running to Hibbing, one to Virginia and one to Grand Rapids, Minnesota. These crews usually return before yardmaster was off duty, at which time he directed the disposal of their trains as well as directed making up of Train 422 for movement to Superior, Wisconsin.

The necessity for the employment of yardmasters at Kelly Lake throughout the winter as well as the summer months will no doubt continue for some time indefinite, as it has in the past.

It will be noted from the exhibits attached to employes' ex parte submission that prior to 1933 yardmasters were employed throughout the entire year; in fact there is, during the winter, necessary work for a yardmaster, and during the summer months, when the ore is moving there is plenty of work for three shifts of yardmasters, if they are permitted to perform the duties usually classed as

yardmaster's work, instead of this service being performed by train dispatchers, clerks and other employes in violation of Article 5 of yardmasters' agreement as mentioned in the ex parte submission.

On page 4 of the Carrier's submission it states in part: "During a heavy ore season the yardmasters' positions are busy ones" etc. The facts are that since November 7, 1937, no yardmaster has been employed at Kelly Lake during any season of the year, although the usual heavy ore movement was carried on during the summer months of 1938, 1939, 1940 and 1941.

At the rate the ore has moved from Kelly Lake and vicinity during the past summer, it is conservatively estimated that twenty million net tons will be moved from the mines by the Great Northern Railroad during the shipping season of 1940, about 80 percent of which moves through Kelly Lake yard.

Please see N. R. A. B. Award 4582.

R. E. Landig,
General Chairman, Order of Railway Conductors.

EXHIBIT "B".

Parties to Dispute (Brotherhood of Railroad Trainmen
(Southern Pacific Company (Pacific Lines).

Statement of Claim:

Ex parte submission of the Brotherhood of Railroad Trainmen in claim of Assistant Yardmaster W. W. May, El Paso Terminal, Rio Grande Division, for two (2) rest days worked in month of December 1938.

Statement of Facts:

W. W. May, Pacific Lines yardman, El Paso Terminal, was assigned as Assistant Yardmaster at that point August 16, 1937, and worked continuously in that capacity until November 15, 1938, no time being taken off except rest days, at which time he took his annual vacation, November 15 to 29, inclusive. Assistant Yardmaster May worked the entire month of December 1938 without rest days.

Claim was made as indicated, which was declined.

Position of Committee:

Articles 3 and 9, Agreement between the Southern Pacific (Pacific Lines) and the Railroad Yardmasters of America, effective February 1, 1938, which agreement applies to Southern Pacific (Pacific Lines) Yardmasters in El Paso Terminal, read:

Article 3

(Rest Days)

"(a) Local Chairman and Superintendents will cooperate in systematizing assignments of yardmasters, where it can be done, in a manner that all yardmasters regularly assigned—including relief yardmasters regularly assigned—and working full month will be granted in following month approximately equal to one (1) rest day per week, without loss of pay.

Example.—Yardmaster working full month of April will be granted one (1) day off per week in May.

(b) If, in any month, yardmasters referred to in paragraph (a) are required to work on their rest days, they will receive additional compensation at pro rata for each day, or days, so worked, but not to exceed two (2) days in any one (1) month.

(c) Rest days will not be cumulative but must be taken each week.

(d) Yardmasters, including regularly assigned relief yardmasters, forced to lay off account of illness or personal business, or a combination of both, five (5) days per month, will not forfeit rest days due them in the following month."

31 Article 9

(Vacations)

"(a) All yardmasters, including regularly assigned relief yardmasters, will be granted fourteen (14) days vacation with pay each year. The fourteen (14) days will include rest days in month vacation is taken.

(b) The annual vacation herein provided for will be granted only to those who have held the position of yard-

master, including regularly assigned relief yardmaster, for a period of twelve (12) months or more.

(c) If, for any reason, a yardmaster, including regularly assigned relief yardmaster, cannot be relieved for his annual vacation, he will receive extra pay at pro rata rate for each vacation, or portion thereof, worked by him.

(d) In the application of this Article, yardmasters—including regularly assigned relief yardmasters—will cooperate in avoiding extra expense to the Company, so far as it is possible."

It will be noted that Mr. May's service as Assistant Yardmaster fully qualified him for two (2) days at pro rata rate for each day, under the provisions of the above quoted rules, to which the Carrier has taken no exception. However, the Carrier has attempted to raise the point that claimant, who is a Pacific Lines yardman, comes under the agreement between the Southern Pacific (Atlantic Lines) and Railroad Yardmasters of America.

Our Committee is unable to understand this attitude of the Carrier, inasmuch as the Railroad Yardmasters of America and Southern Pacific (Pacific Lines) have an agreement, made effective February 1, 1938, which is still in full force and effect and applies to Southern Pacific (Pacific Lines) Yardmasters in the El Paso Terminal.

Reference is also made to Award No. 4117, Division One, National Railroad Adjustment Board, sustaining Committee's position that Southern Pacific (Pacific Lines) Yardmasters in El Paso come under the Southern Pacific (Pacific Lines) Yardmasters' Agreement.

In view of the above quoted rules and Board Award, Committee respectfully requests your Honorable Board render a decision in favor of the claimant.

Conference was held with the Management July 9, 1940, therefore, the Carrier has been fully apprised of Committee's position as herein set forth.

Respectfully submitted,

Oral hearing requested.

(Signed) R. J. Brooks,
General Chairman, Brotherhood of Railroad Trainmen, Southern Pacific (Pacific Lines).

32 EXHIBIT "C"

File—(No Protest from Labor Members)

National Railroad Adjustment Board

First Division

Chicago, Illinois

August 28, 1941

Dockets 6404
10665
12101
12277
12278
12280
12294
12295
11801

Messrs. Fred W. Lewis
Wm. Bishop
Paul M. Carter
R. E. Edrington
F. J. Williams

Gentlemen:

On the 11th day of July, 1938, a final decree and injunction was entered by Honorable William H. Holly, Judge of the District Court of the Northern District of Illinois, Eastern Division, in the case entitled United States, ex rel, Railroad Yardmasters of America, R. V. Murphy, J. Besant, E. E. Wheeler, *vs.* National Railroad Adjustment Board, Fourth Division, C. W. Deal, Chairman, R. B. Parkhurst, Secretary, A. J. Hancock, R. A. Walton, Charles P. Neill, E. J. Hamner, S. J. Hogan, and E. Murrin, Chancery No. 16031. Said decree specifically enjoined and commanded that the Fourth Division of the National Railroad Adjustment Board and the members of that division individually take jurisdiction of, hear, determine and enter awards on the merits on three ex parte submissions or disputes of R. V. Murphy, J. Besant and E. S. Wheeler, employed as yardmasters. That decree provided in part:

"That yardmasters are not included in any of the classes of employees over whose disputes jurisdiction is by said act (Railway Labor Act, 45 U. S. C. A. Sec. 153) given to the First Second or Third Divisions respectively of said

National Railroad Adjustment Board, nor do either of said last mentioned divisions of said board have jurisdiction of disputes arising out of their employment in which yardmasters are involved."

There are now pending before the First Division of the National Railroad Adjustment Board the following submissions or disputes arising out of employment in which yardmasters are involved:

Docket No. 6404—Order of Railway Conductors *vs.* Great Northern Railway Company.

Docket No. 10665—Brotherhood of Railroad Trainmen *vs.* Southern Pacific Lines in Texas and Louisiana.

Dockets 12101
12277
12278
12280
12294
12295

Brotherhood of Railroad Trainmen
vs.
Southern Pacific Company
(Pacific Lines)

In view of the said final decree and injunction of July 11, 1938, the carrier members of the First Division hereby give notice that they will not agree to set the said cases for hearing; and since it appears that by the terms of the amended Railway Labor Act as construed by the District Court of the Northern District of Illinois, Eastern Division, jurisdiction over the subject matter of each of the aforecited dockets is vested in the Fourtth Division, we propose that these cases and similar disputes and submissions arising in the future be docketed with the Fourth Division of the National Railroad Adjustment Board, and that said Fourth Division hear, determine, and enter awards thereon.

There is also at present pending in the First Division Docket 11801—Trainmen *vs.* Minneapolis, St. Paul & Sault Ste. Marie Railway—involving the seniority dating of a yardmaster as such, and upon which hearing has been waived. Jurisdiction over the subject matter of this docket we also maintain is vested in the Fourth Division, and not the First Division. Consequently, we will not participate in any consideration of the merits, and propose that said docket also be filed with the Fourth Division, and that

said Fourth Division hear, determine, and enter an award thereon.

Yours very truly,
Sgd. T. K. Flaherty,
For the Carrier Members—
First Division.

Copies to:

Mr. T. S. McFarland, Secretary, First Division: To be attached to and made a part of the Division's master files on these nine dockets.

Mr. R. A. Walton, Chairman, Fourth Division.

Mr. E. J. Hamner, Vice Chairman, Fourth Division.

Mr. R. B. Parkhurst, Secretary, Fourth Division.

33 EXHIBIT "D"

34 EXHIBIT "D"

Award No. 3609
Docket No. 5994

National Railroad Adjustment Board

First Division

Parties to Dispute:

Brotherhood of Railroad Trainmen
The Baltimore and Ohio Railroad Company

Statement of Claim: Protest relative to the removal of names of extra yardmasters from the Yardmasters' Rosters at Lincoln Park and Salamanca, New York, and request that their names be restored to the roster and paid the difference in pay for each day they would have worked as yardmasters while their names were off the yardmasters' seniority lists.

Employes' Statement of Facts: The names of several yardmasters that have appeared on all previous rosters at Lincoln Park and East Salamanca were removed from the July 1, 1936 rosters.

Position of Employes: Prior to the issuance of the roster on or about JJuly 1, 1936, the Yardmasters' seniority

lists of Lincoln Park and East Salamanca Yards were as follows:

"The Baltimore and Ohio Railroad Company

Buffalo Division

Lincoln Park Yard

Roster of Yardmasters and Assistant Yardmasters

Name		A.Y.M.	Y.M.	G.Y.M.
M. E. Moynihan		3-16-18	7-16-20	6- 1-21
C. A. Evans		10- 4-22	4-16-23	
A. G. Watson	*	11-13-25	11- 9-26	
H. H. Warner	**	4-21-23		
T. F. Curry	**	2-21-27		
L. P. Flaherty	**	8-22-27		

* — Watson passed Warner as Yardmaster

** — Extra Assistant Yardmasters.

"The Baltimore and Ohio Railroad Company

Buffalo Division

East Salamanca Yard

Roster of Yardmasters and Assistant Yardmasters

Name		A.Y.M.	Y.M.	G.Y.M.
E. J. Spellman				1- 8-29
D. P. Mooney	*	5-21-04		
J. P. Creagh		7-10-17	8-18-18	
H. L. Campbell	*	11- 1-18	4-23-23	
W. P. Connelly	*	4-16-19		
H. A. Bliss	*	5- 1-20		
W. J. Driscoll	*	2- 5-25		

* — Extra Assistant Yardmaster."

On or about July 1, 1936, the names of H. H. Warner, T. F. Curry and L. P. Flaherty were removed from the Lincoln Park Yardmasters' list, and the names of D. P. Mooney, H. L. Campbell, W. P. Connelly, H. A. Bliss and W. J. Driscoll were removed from the East Salamanca Yardmasters' list, as shown by the following:

"Seniority List of Yardmasters

Buffalo Division

Yardmaster		Present Position
Punxsutawney		
R. G. Tate	1- 1-1907	Gen. Y. M. Punxsutawney
B. J. Craft	9-18-1909	Y. M. 3:00 P. M.—11:00 P. M.
T. J. Kane	10- 3-1923	" 11:00 P. M.— 7:00 A. M.
Buffalo		
G. E. Lanagan	11-10-1920	Y. M. 7:00 A. M.— 3:00 P. M.
E. J. Spellman	7-17-1922	Gen. Y. M. E. Salamanca 1-8-1929
B. M. Watterson	11- 8-1928	Y. M. 3:00 P. M.—11:00 P. M.
M. R. Burns	1- 8-1929	" 11:00 P. M.— 7:00 A. M.
East Salamanca		
J. P. Creagh	8-18-1918	Yardmaster Second Trick
Lincoln Park		
M. E. Moynihan	7-16-1920	Gen. Y. M. Lincoln Park, N. Y.
C. E. Evans	4-16-1923	Y. M.—Brooks Ave. 3:00 P. M.—11:00 P. M.
A. G. Watson	11- 9-1926	Y. M.—Brooks Ave. " 11:00 P. M.— 7:00 A. M.
Clarion Junction		
J. H. Webb	8-13-1918	Clerk—Position Abolished."

You will see that these men have been shown on the several seniority lists from the time that their date is shown above, and during that period of time they have performed Yardmasters' service, both as regular and extra yardmasters, and established seniority as yardmasters during such period of time as provided in Rules 12 and 13, found on page 64 of the Trainmen's Agreement in effect on the Buffalo Division (former B. R. & P.), reading as follows:

"12. Yardmen promoted to official positions will retain their seniority.

"13. In the appointment of assistant yardmasters, the senior qualified yardmen shall be considered."

Therefore, the Committee contends that the Carrier cannot arbitrarily deprive these yardmasters of the seniority they have established, and which has been recognized by the Carrier over a period of years. Such seniority as yardmasters should continue in this class until voluntarily relinquished or until they are disqualified.

Oral hearing is desired.

Carrier's Statement: The above protest and claim quoted from the submission made by General Chairman Qualters in this case, refers to the removal of the names of extra yardmasters from the Yardmasters' Seniority Roster at Lincoln Park and East Salamanca and is not specific as to the names of the extra yardmasters that have been removed nor the amount of time such extra yardmasters are claiming as the result of their names having been removed from the Yardmasters' Seniority Roster. The Carrier is of the opinion that the Board should require the representatives of the Trainmen's Organization to set forth more definitely and comprehensively the particulars in this general complaint.

Our records show that the complaint of removing the names of extra yardmasters at Lincoln Park was submitted by the Local Chairman of the Trainmen's Committee to the Superintendent and in conference December 22, 1936, between Local Chairman L. P. Flaherty, representing the Brotherhood of Railroad Trainmen, and the Superintendent. A memorandum of conference was prepared containing the following joint statement of facts:

"The names of H. H. Warner, T. F. Curry and L. P. Flaherty were omitted from the only 1936 issue of seniority roster for Yardmasters at Lincoln Park, N. Y."

The same complaint was made by the Local Chairman in regard to the removal of names of extra yardmasters from the Yardmasters' Roster at East Salamanca. This complaint was submitted ex parte by the Local Chairman but no names were mentioned as having been improperly removed from the Yardmasters' Seniority Roster.

The investigation in connection with this complaint discloses the following facts:

1st—There is an agreement between the management of the former B. R. & P. Ry. Co. and the representatives of the Railroad Yardmasters of America governing rates of pay, rules and working conditions of yardmasters and as-

sistant yardmasters effective April 16, 1923. When the Baltimore and Ohio Railroad Company acquired the property of the B. R. & P. Ry Co., January 1, 1932, this agreement was accepted by the Company and is still in full force and effect.

2nd—After the effective date of this agreement a number of yard employes holding seniority rights under the Trainmen's Agreement, were promoted to the positions of Yardmaster and Assistant Yardmaster in the various yards on that property. Their names were placed on the Yardmasters' Seniority Roster with a seniority standing from the date of their appointment to such positions.

3rd—As result of reduction and changes in the yardmaster forces from time to time, the employes involved in this dispute were returned to yard service in the exercise of their seniority rights under the Trainmen's Agreement. However, after their return to yard service their names were still erroneously carried on the Yardmasters' Roster from year to year up to 1936, although at that time none of the employes in question were filling positions coming within the scope of the Yardmasters' Agreement and many of them had not filled such positions for several years.

When the Yardmasters' Roster for the year 1936 was being prepared, the question arose in regard to continuing the names of these employes on the roster and attention was called to Rule 4 of the Yardmasters' Agreement, which provides:

"Seniority of Yardmasters will date from the time they are assigned to positions as Yardmasters and will continue while employed as Yardmasters except that Yardmasters promoted to official positions will retain their seniority. Seniority Districts will be limited to yard in which employed."

In view of the fast that this rule was being invoked by the representative of the Yardmasters' Organization and at its insistence, the management removed the names of all the employes in question in compliance therewith as they were not employed at that time as yardmasters, and the Yardmasters' Organization contended that the rule had not been properly applied in past years when employes ceased to be employed as yardmasters and should have been removed from the rosters at that time. This action provoked the present dispute and was handled in the regular manner up to the Assistant to Vice President with the

Trainmen's Organization and the request was declined. During the period this dispute was being handled with the Trainmen's Organization the General Chairman, representing the Yardmasters on the Buffalo Division, former B. R. & P. territory, where a separate agreement is in effect as before stated, and the General Chairman representing the other divisions of the Baltimore and Ohio System, were taking active part in this dispute and under date of April 27, 1937, wrote the undersigned a joint letter in regard to the proper interpretation and application of Article 4 (the rule quoted above involved in this dispute and applying on the former B. R. & P. territory) and a similar rule, Article 9-A of the Baltimore & Ohio Yardmasters' Agreement, from which letter we quote, in part, as follows:

"* * * It is our conclusion that Article 9-A of the Baltimore and Ohio Yardmasters' Agreement and Article 4 of the former B. R. & P. Yardmasters' Agreement, which, in substance, are practically the same, will be continued in effect and will be applied as they have been interpreted in the past, to wit, no seniority is acquired by any employe working extra as yardmaster, and seniority does not start until an employe is assigned to a regular position as yardmaster. The names of the employes who may have worked in the past or may work in the future as extra yardmasters, have no place on the yardmasters' Seniority Roster, as the present rules clearly provide that seniority as a yardmaster does not start until assigned to a regular position.

Will be glad if you will bring this matter to the attention of all concerned in the preparation of rosters for the current year as well as rosters in the future."

It appears to the Carrier that this case involves a jurisdictional dispute and the management is placed in the peculiar predicament of having to defend a case involving pay claims against an organization that does not hold the contract covering the work of yardmasters and assistant yardmasters, which work is covered by a bona fide contract with another National Labor Organization. The management has always taken the position that the duly accredited representatives of a Railroad Labor Organization have the right to contend for a construction and interpretation of their own agreement without consideration of any other Railroad Labor Organization not a party thereto, and regardless of any construction thereof by such other organization.

It is the judgment of the Carrier that the representatives of the Railroad Yardmasters of America, Buffalo Division, former B. R. & P. Ry. should be made a party to this dispute before the case is heard by this Honorable Board in order that the rights of all parties at interest may be fully heard and considered.

We are firmly convinced that the action of the Carrier in this case in removing the names in dispute from the Yardmasters' Seniority Roster was in strict compliance with Rule 4 of the Yardmasters' Agreement applying on the Buffalo Division, former B. R. & P. Ry., and we believe this Board will sustain the right of the Yardmasters' Organization to interpret and construe their own agreement without interference from any other organization.

Oral hearing is desired.

Findings: The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjust. ent Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record shows that each of complainant yardmen, viz:

H. A. Warner
T. P. Curry
L. P. Flaherty
D. P. Mooney
H. L. Campbell
W. P. Connelly
H. A. Bliss
W. J. Driscoll

had, prior to 1936, acquired a date as, "Extra Assistant Yardmaster" on the "Roster of Yardmasters and Assistant Yardmasters," and which all parties concerned recognized over a long term of years as entitling them (the said yardmen) to preferential employment, over their respective juniors on said roster and over other yardmen having no date thereon, on temporary or permanent vacancies in position of Assistant Yardmaster as evidenced by the fact

that they were so used with more or less frequency throughout the years their names and dates were carried on the said roster.

In these circumstances it is held that there was, by common consent of all parties concerned tantamount to agreement between them, a working condition established affecting the employment status and wages of the aforenamed complainant yardmen of which they could not rightfully be deprived antedating an agreement between the carrier and the accredited representatives of the Yardmaster and Assistant Yardmaster class, and which agreement or interpretation of agreement is said to have been adopted by these parties on or about July 1, 1936.

AWARD

Such seniority as acquired by the aforenamed complainant yardmen under Article IV of the Yardmasters' Agreement prior to July 1, 1936, shall be restored to them, but without accumulating additional seniority in the Yardmaster and/or Assistant Yardmaster class subsequent to July 1, 1936, unless and until the same may have been earned under Article IV appearing in "Memorandum of Understanding reached at conference held at DuBois, Pennsylvania, April 18th, 1923, between the Management of the Buffalo, Rochester and Pittsburgh Railway Company and the Buffalo, Rochester and Pittsburgh Yardmasters' Association" and interpretations thereof made or adopted by the parties thereto or their successors. Claim for difference in pay for each day subsequent to July 1, 1936, that the aforenamed complainant yardmen would have worked as assistant yardmaster had they been given the preferential consideration herein awarded, is sustained

National Railroad Adjustment Board,
By Order of First Division.
Attest: (Sgd.) T. S. McFarland,
Secretary.

Dated at Chicago, Illinois, this 6th day of March, 1939.

35 EXHIBIT "E".

Award No. 4077
Docket No. 6960

National Railroad Adjustment Board

First Division

The First Division consisted of the regular members and in addition Referee Dexter M. Keezer when award was rendered.

Parties To Dispute:

Brotherhood of Railroad Trainmen
Southern Pacific Company (Pacific Lines)

Statement of Claim: Claim of Yardman J. R. Chapman, Eugene Yard—Portland Division, for difference between rate of pay allowed him and rate applicable to position of General Yardmaster, September 11th, 1937, and subsequent dates.

Employes' Statement of Facts: On September 7th, 1937, circular No. 7, was posted on bulletin board in switch shanty at Eugene reading:

Southern Pacific Company
(Pacific Lines)
Circular No. 7

Portland, Sept. 7, 1937.

Mr. J. A. Copeland is appointed General Yardmaster at Eugene, vice W. S. Love, assigned to other duties.

Effective this date.

G. H. Kilborn,
Trainmaster.

Approved:
D. J. Russell,
Asst. Superintendent.

Mr. Copeland held no seniority in Eugene Yard.

Above quoted circular was first information that there was to be any vacancy for position of General Yardmaster at Eugene and bulletin was not posted, advertising this position.

Yardman J. R. Chapman made application to take General Yardmaster position vacated by W. S. Love in letter of September 11, 1937, reading:

Eugene Oregon,
September 11, 1937.

Mr. E. L. King,
Superintendent,
Portland, Oregon.

Dear Sir:

Please accept this letter as my application to take the General Yardmaster Position, Eugene Yard, that was recently vacated by Mr. W. S. Love and to which Mr. A. J. Copeland, holding his yard seniority in Portland Yard, has been appointed.

As no notice of Mr. Loves vacancy appeared on the bulletin I request this be effective as of the date of Mr. Copeland's appointment, which was September 7, 1937.

This in accordance with, Docket Case (B. R. T.) No. 1, YDM 192-39 of July 9, 1937, promotion rule adopted by Mr. A. J. Hancock, Asst. General Manager S. P. Co., and Mr. C. H. Smith, Vice President, B. R. T., and bearing the signatures of Mr. R. J. Brooks, General Chairman B. R. T., Mr. W. E. Jones, General Chairman, B. L. F. & E., and Mr. S. A. Boone, Vice President, B. L. F. & E.

Yours truly,
(Signed) J. R. Chapman,
Yardman, Eugene Yard.

Position of Committee: The Committee contends, Yardman Chapman is entitled to compensation as claimed under provisions Docket Case (B. R. T.) No. 1 of July 9, 1936, file YDM 192-39, copy of which is submitted as Committee's Exhibit.

The Board's particular attention is directed to sections (a) (b) and (c) of the exhibit, which are quoted below for ready reference.

"(a) The title 'yardmaster' will include General Yardmasters (except at large and important terminals), Assistant General Yardmasters, Yardmasters and Assistant Yardmasters.

(b) A seniority list, to be known as a 'protected list' will be prepared covering each yard, showing date of all yardmasters (except General Yardmasters at large and important terminals), as of October 26, 1934.

(b) A seniority list, to be known as a 'protected list' will be prepared covering each yard, showing date of all yardmasters (except General Yardmasters at large and important terminals), as of October 26, 1934.

(c) In filling positions of Yardmasters, men shown on protected seniority list of yardmasters as of October 26, 1934, will have priority rights to such positions in their seniority order.

Should seniority list become depleted or in case no applications are received from those on the protected seniority list for vacancies or new positions created, senior qualified yardmen in point of service will be used. As a prerequisite to such appointment it will be necessary for the applicant to have served at least one year as engine foreman in yard where promoted."

The Board's attention is further directed to page three of the Exhibit, which shows the "protected list" of yardmasters at Eugene in accordance with Section (b) of the Exhibit. The name of A. L. Harrington appears on this "protected list" of Yardmasters and at the time this list was made Mr. Harrington was General Yardmaster at Eugene, therefore, in accordance with provisions of Section (b) of Exhibit, Eugene was not classed as a large and important terminal and the position in question should have been filled in accordance with Section (c) of Exhibit.

The Board's attention is cited to fact that in September 1937, a jurisdiction vote was taken by U. S. Mediation Board for representation of Yardmasters on Southern Pacific (Pac. Lines). In this election the General Yardmaster at Eugene was permitted to vote, which further substantiates the Committee's contention that Eugene Yard is not included in Ex parte 72, I. C. C.

The Committee contends that Yardman Chapman, having in excess of one year service as engine foreman in Eugene Yard and being senior yardman making application for General Yardmaster position should have been assigned and your honorable Board is requested to so find and award.

Conference was held with the Carrier, November 28, 1938.

The Committee's representative desires to be present when this case is heard.

Carrier's Statement: Carrier's submission pursuant to notice served by the National Railroad Adjustment Board, First Division, in connection with ex parte submission of the Brotherhood of Railroad Trainmen, wherein the following claim is presented:

"Claim of Yardman J. R. Chapman, Eugene Yard-Portland Division, for difference between rate of pay allowed him and rate applicable to position of General Yardmaster, September 11, 1937, and subsequent dates."

The only basis for this claim, of which the carrier has knowledge is stated in Organization's communication February 25, 1938, that part reading:

"Inasmuch as Eugene Yard was not recognized by the National Mediation Board as coming under I. C. C. Ex Parte No. 72, which is borne out by the fact that General Yardmaster at Eugene was voted by the Mediator in recent pool for jurisdiction of yardmasters. This Committee therefore, takes the position Yardman Chapman is entitled to time as claimed and respectfully request adjustment be made accordingly."

The Mediation Board did not presume to decide the application of Ex Parte No. 72. The omission of General Yardmaster at Eugene was by agreement between the Railroad Yardmasters of America and the Carrier and is open for further discussion between the Carrier and Yardmasters' Organization any time an occasion for such discussion may arise.

Position of Carrier: When Yardmen's Agreement in effect between the Brotherhood of Railroad Trainmen and the Carrier was revised November 26, 1920, all reference to General Yardmasters, Assistant General Yardmasters and Yardmasters was eliminated from said Agreement, confining representation of yardmasters by B. R. T. to assistant yardmasters. Notwithstanding said Agreement was consummated and signed, shortly thereafter a movement was initiated by the B. R. T. in an endeavor to represent the above classes, which, as stated, had been eliminated in 1920. This endeavor culminated by the adoption of Conference Memorandum of October 26, 1934, reading:

"Conference Memorandum

In filling positions of General Yardmasters (except at large and important terminals), Assistant General Yardmasters, and Yardmasters, such appointments will be made in seniority order from Yardmen in the service at point needed, first consideration to be given Assistant Yardmasters, if any; second—Engine Foremen; third—Yardmen; with the understanding in all cases the man's ability to fill the position will also be considered in making such appointments. In case no qualified men available at point needed, a man from some other yard on the territory where yardmen's seniority extends, with proper ability, will be used.

(Sgd.) A. T. Mercier,
General Manager,
Southern Pacific Company,
(Pacific Lines).

(Sgd.) Wm. Bishop,
Vice-President, B. of R. T.
(Sgd.) R. J. Brooks,
General Chairman, B. of R. T.
(Sgd.) F. E. Lazenby,
Vice-General Chairman, B. of R. T.
(Sgd.) R. P. Standley,
General Secretary, B. of R. T.
San Francisco, Calif.,
October 26, 1934."

In the application of said Memorandum, Carrier held that vacancies and new positions of General Yardmasters (except at large and important terminals), Assistant General Yardmasters and Yardmasters, as they relate to each other, should be filled in their seniority order; in other words, General Yardmasters, Assistant General Yardmasters and Yardmasters were privileged to make application and fill vacanies and new positions of General Yardmasters, Assistant General Yardmasters and Yardmasters as they may occur, and when necessary to augment the number of yardmasters or in filling temporary vacancies, eligible yardmen would be considered in their seniority order for such promotion, beginning with Assistant Yardmasters. Organization contended that the Memorandum should be interpreted that senior yardman in service, making applica-

tion, should be assigned to position of General Yardmaster, Assistant General Yardmaster or Yardmaster, as new positions and vacancies occur. By this manner of handling all General Yardmasters, Assistant General Yardmasters and Yardmasters regularly assigned and working as such, and who had satisfactorily filled such positions over a period of years, would be restricted from further advancement in the service. Organization lost sight of the fact that first consideration should be given to Assistant Yardmasters, in other words, they lost sight of the fact that the line of promotion began with the group represented by the B. R. T., that is, Assistant Yardmasters, but did not extend or outline the manner in which yardmasters may be promoted as such promotion relates to each other. It is folly to contend that an assistant yardmaster or an engine foreman should be promoted to General Yardmaster over those already serving as General Yardmasters, Assistant General Yardmasters and Yardmasters. What is contemplated by the Memorandum is, that yardmen would in time advance to positions of General Yardmasters (except at large and important terminals), Assistant General Yardmasters and Yardmasters, and that such appointments would be made in seniority order from yardmen in the service, first consideration to be given Assistant Yardmasters.

With view of clarification on July 9, 1936, conference was held between Mr. C. H. Smith, Vice-President, B. R. T., Mr. R. J. Brooks, Gen. Chairman, B. R. T., Mr. S. A. Boone, Vice-Pres., B. L. F. & E., and Mr. W. E. Jones, Gen. Chairman, B. L. F. & E., representing Organizations, and Mr. A. J. Hancock, Assistant General Manager, representing Carrier, and following Interpretation of the Conference Memorandum of October 26, 1934, was agreed upon:

"(a) The title 'yardmaster' will include General Yardmasters (except at large and important terminals), Assistant General Yardmasters, Yardmasters and Assistant Yardmasters.

(b) A seniority list, to be known as a 'protected list' will be prepared covering each yard, showing date of all yardmasters (except General Yardmasters at large and important terminals), as of October 26, 1934.

(c) In filling positions of Yardmasters, men shown on protected seniority list of yardmasters as of October 26, 1934, will have priority rights to such position in their seniority order.

Should seniority list become depleted or in case no applications are received from those on the protected seniority list for vacancies or new positions created, senior qualified yardmen in point of service will be used. As a prerequisite to such appointment it will be necessary for the applicant to have served at least one year as engine foreman in yard where promoted.

(d) Should the senior yardman not be available account of leave of absence or on account of sickness or other bona fide reason, he will, on reporting for duty, within a period of five (5) days, decide whether he desires to fill the vacancy or new position created during his absence or forfeit his rights as provided in Section (f).

(e) Should ability of senior yardman be questioned or an assistant yardmaster demoted, he will be furnished reasons therefor, and in either case right of appeal and investigation under yardmen's agreement is conceded.

The right of any yardmaster to have the regularly constituted committee of the Brotherhood of Railroad Trainmen represent him in the handling of his grievance, under the recognized interpretation of the agreement governing, is conceded.

(f) Should senior yardman decline promotion to yardmaster or decline vacancy as yardmaster, he will do so in writing, showing date of same. In each case he will forfeit his rights as yardmaster for a period of six months. At the expiration of six months from date shown in notice, he will be offered new positions and permanent vacancies occurring thereafter but will not be privileged to displace a junior man holding position as yardmaster, either regular or extra; neither will he be used to fill temporary vacancies.

(g) Should yardman who relinquished his right accept promotion to new position or permanent vacancy after expiration of six months and later job is discontinued, or he is displaced by senior man, he will be privileged to make displacement as outlined in Section (h).

(h) When the number of yardmasters is reduced, those losing their positions will be privileged to within five days (or if on leave of absence account sickness or otherwise, within five days from date of return) displace a junior yardmaster; if no junior yardmaster, then they may displace any yardman their junior.

(i) A yardmaster whose name appears on yardmasters' protected seniority list as of October 26, 1934, who of his own accord relinquishes his position as yardmaster in

writing and accepts other service not coming within the classification of yardmasters as set forth in Section (a), will forfeit his seniority on the protected list, except in case of bona fide sickness or injury; in such case yardmaster may relinquish his position as yardmaster and accept a position as yardman for a period of time without forfeiting his priority seniority. Local Chairman, B. R. T., will be advised from time to time, on request, what the latest physical condition of the individual is, and right of appeal against further extension of request involved, is conceded.

(j) Yardmasters regularly assigned will have the right to exercise their seniority on new positions and on vacancies of fifteen (15) days or more."

For ready reference protected seniority list, Portland Division, as of October 26, 1934, is shown:

"Portland Division

Name	Yardmaster Seniority	Yard Seniority
Brooklyn:		
W. C. Ward	8/ 9/10	10/27/86
R. W. Jackson	1/13/13	7/15/09
W. E. Christianson	4/ 6/17	4/29/01
R. W. Fitzsimmons	9/ 1/21	9/ 3/12
T. V. Odekirk	12/ 1/22	6/ 4/20
D. T. Smith	6/13/23	4/13/20
W. E. Palmer	9/ 8/26	8/ 1/11
C. J. Wheeler	5/15/34	4/12/20
Eugene:		
A. L. Harrington	6/18/22	5/ 6/20
A. J. O'Northam	5/31/24	6/ 2/23
W. S. Love	6/27/24	10/ 9/17
Salem:		
J. G. Koenig	4/ 1/23	
Albany:		
I. A. Hurst	7/ 1/23	4/19/16"

It will be noted that the above Interpretation sustains the Carrier's interpretation of the October 26, 1934 Conference Memorandum in that it restricts yardmen from exercising seniority over yardmasters assigned as such as of Octo-

ber 26, 1934, and that said yardmasters were given priority rights to such positions in their seniority order, but nothing in said Interpretation implies or contemplates that the Brotherhood of Railroad Trainmen represents or legislates for yardmasters, except the continuance of their right to represent assistant yardmasters. This analysis is emphasized by second paragraph of Section (e) of the Interpretation, reading:

"The right of any yardmaster to have the regularly constituted committee of the Brotherhood of Railroad Trainmen represent him in the handling of his grievance, under the recognized interpretation of the agreement governing, is conceded."

In further explanation, the purpose and intent of the Interpretation was to clear up misunderstandings growing out of Conference Memorandum of October 26, 1934, and to establish a uniform mode of procedure in the promotion of yardmen to positions of yardmasters, advancing from that point in conformity with Yardmasters' Agreement.

As previously stated, assistant yardmasters were the only yardmasters represented by the B. R. T. since 1920, which representation terminated with an election held by the National Mediation Board as set forth in Certification by that Board under date of September 17, 1937.

Between the time the Conference Memorandum was agreed to (Oct. 26, 1934) and the Interpretation thereof (July 9, 1936), Yardmasters on Southern Pacific, Pacific Lines, had voted in favor of representation by the Railroad Yardmasters of America, and on December 10, 1934, Mr. Thos. Goodwin, who had been elected General Chairman of that Organization, advised carrier that in accordance with vote taken the Railroad Yardmasters of America had been elected to represent General Yardmasters, Assistant General Yardmasters and Yardmasters, submitting record of vote taken by his Organization. On canvassing signatures submitted by Mr. Goodwin and his Committee, it was found that vote had been legally conducted and that Organization authorized under the Railway Labor Act to represent the aforesaid General Yardmasters, Assistant General Yardmasters and Yardmasters, and on December 26, 1934, Committee of the Railroad Yardmasters of America was notified that signatures presented had been identified and with one or two exceptions were found to be correct, and 2:00 P. M. Friday, Jany. 4, 1935,

was set for negotiations, which continued until April 2, 1935, when agreement was entered into and signed by representatives of the Railroad Yardmasters of America and Carrier, covering General Yardmasters, Assistant General Yardmasters and Yardmasters, and, in consonance with I. C. C. Ex Parte 72, Section (b), Article 10 was adopted, reading:

"Day General Yardmaster Oakland, San Francisco, Los Angels, San Joe, Brooklyn, Eugene, Sacramento, Roseville, Tucson, Fresno and Bakersfield, are excluded from this Agreement." (Emphasis supplied.)

It will be noted claim of Yardman J. R. Chapman did not develop until September 11, 1937, or 2 years and 5 months subsequent to Yardmasters' Agreement of April 2, 1935, containing Section (b), Article 10, above quoted. If there was no other supporting testimony, this alone would be sufficient to support the Carrier's contention that there is no merit in position taken by the Brotherhood of Railroad Trainmen in this case.

On September 17, 1937, carrier received advice from National Mediation Board, reading:

"National Mediation Board

(letterhead)

Washington, September 17, 1937

Mr. J. H. Dyer, Vice-Pres.,
Southern Pacific Co. (Pacific Lines) Case No. R-367
San Francisco, Calif.

Dear Mr. Dyer:

By direction of the Board, I am enclosing Certification in the matter of representation of yardmasters and assistants, employes of the Southern Pacific Company (Pacific Lines).

Very truly yours,
(Sgd.) George A. Cook,
Secretary."

Certification follows:

"National Mediation Board

Washington

In the matter of	)	Case No. R-367
Representation of Employes	)	Certification
of the	)	
Southern Pacific Company (Pacific Lines)	)	Sept. 17, 1937
Yardmasters and Assistants	)	

The services of the National Mediation Board were invoked by the Railroad Yardmasters of America to settle a dispute as to who may properly represent general yardmasters (except those coming under provisions of Ex Parte 72 of the I. C. C.), assistant general yardmasters, assistant yardmasters, yardmasters and relief yardmasters, employes of the Southern Pacific Company (Pacific Lines), as provided by Section 2, Ninth, of the Railway Labor Act, as amended.

The Board assigned Mediator William F. Mitchell, Jr., to investigate the dispute, after finding that a dispute existed among the employes in question the Board directed him to take a secret ballot to determine the choice of the employes.

Following are the results of the election as reported by the mediator and attested to by representatives of the contesting organizations who acted as observers:

Number of employes voting for contesting organizations:

	For Railroad Yardmasters of America	For Brotherhood of Railroad Trainmen	Void Ballots	No. of employes eligible to vote
Yardmasters and Assistants	113	75	7	224

On the basis of the investigation and report of election the National Mediation Board hereby certifies that the Railroad Yardmasters of America has been duly designated and authorized to represent general yardmasters (except those coming under provisions of Ex Parte 72 of the I. C.

C.), assistant general yardmasters, assistant yardmasters, yardmasters and relief yardmasters for the purposes of the Railway Labor Act.

By order of the National Mediation Board,

(Sgd.) George A. Cook,
Secretary."

It will be noted that the yardmasters were included in this Certification.

On September 29, 1937, General Chairman, Mr. Thos. Goodwin, Southern Pacific System, Pacific Lines, Railroad Yardmasters of America wrote Carrier as follows:

"This is to advise you the required thirty (30) days notice is hereby given you for the purpose of adding new articles to our present agreement, and the proper interpretation of other articles, also to add other articles pertaining to the rates of pay, rules and working conditions affecting Assistant Yardmasters and relief yardmasters."

to which carrier made reply on October 4, 1937, reading:

"This will serve to acknowledge your letter September 29th, 1937, reading:

'This is to advise you the required thirty (30) days notice is hereby given you for the purpose of adding new articles to our present agreement, and the proper interpretation of other articles, also to add other articles pertaining to the rates of pay, rules and working conditions affecting assistant yardmasters and relief yardmasters.'

Will appreciate it if you will let me have draft of the proposals you have in mind."

On October 16, 1937, Mr. Goodwin wrote, stating:

"Enclosed herewith is draft of new agreement which the Railroad Yardmasters of America wish to make with the Southern Pacific Co. (Pacific System). There may be a few more minor additions or changes, as well as the rates of pay that can be settled in conference with you.

The General Committee of the Railroad Yardmasters of America are anxious to meet with you at your earliest convenience regarding proposed Agreement."

Negotiations commenced shortly thereafter and continued through intermittently until January 17, 1938, when Agreement was consummated, taking effect February 1, 1938. In this Agreement, Section (b), Article 10, was continued verbatim, and for ready reference is quoted:

"Day General Yardmaster, Oakland, San Francisco, Los Angeles, San Jose, Brooklyn, Eugene, Sacramento, Rose-

ville, Tucson, Fresno and Bakersfield, are excluded from this Agreement." (Emphasis supplied.)

It will be noted the position of General Yardmaster, Eugene, was excluded from representation in both of the aforesaid agreements, (1st, the Agreement of April 2, 1935, and 2nd, the Agreement of Jany. 17, 1938) between the Railroad Yardmasters of America and the carrier; hence, carrier is privileged to select the person it considers most competent to fill the position of General Yardmaster at that point. In this connection, Eugene terminal covers a very large territory, being the terminus of the Siskiyou Line, Cascade Line, Coos Bay Line, Eugene-Portland Line, Springfield-Brownsville Branch and Wendling Branch. It is the first point where our supply of empties from the West must be segregated and switched and distributed to the various arteries leading therefrom. It is a widely scattered yard, covering considerable territory, and in reality is a more important one—because of the physical characteristics—than Brooklyn-Portland.

Mr. Chapman, while having qualified as assistant yardmaster Oct. 23, 1935, yet at no time has he filled a regular assignment as assistant yardmaster, notwithstanding on certain occasions he worked in that capacity. We have no record of when, if ever, he worked as Yardmaster, Assistant General Yardmaster or General Yardmaster, and on seniority list standing ahead of Chapman are shown the names of Assistant Yardmasters Porter, Ware, Mayers, Ryan and Boykin. It is quite evident, from the standpoint of experience, Mr. Chapman was not qualified to fill the position of General Yardmaster at Eugene.

In summing up case:

(1) It is clearly proven that the Brotherhood of Railroad Trainmen has not represented yardmasters on Southern Pacific Lines, since November 26, 1920, the exception to this is, that assistant yardmasters were represented by that Organization until Sept. 17, 1937, when the National Mediation Board certified that the Railroad Yardmasters of America had been duly designated and authorized to represent General Yardmasters (except those coming under provisions of Ex Parte 72 of the I. C. C.), Assistant General Yardmasters, Assistant Yardmasters, Yardmasters and relief yardmasters for the purposes of the Railway Labor Act.

(2) The Railroad Yardmasters of America, having

been duly authorized under the Railway Labor Act to legislate for yardmasters on Southern Pacific (Pacific Lines), beginning April 2, 1935, is and has been the sole bargaining agent for General Yardmasters (except those coming under provisions of Ex Parte 72 of the I. C. C.), Assistant General Yardmasters and Yardmasters, and subsequent to the Certification of September 17, 1937, also for Assistant Yardmasters.

(3) Eugene being considered a large and important terminal, in conference with the Railroad Yardmasters of America it was agreed position of General Yardmaster at Eugene would be omitted from Agreement and that the carrier was privileged to select a General Yardmaster if necessary from some other point on the Division, as was done in this case; however, the Railroad Yardmasters of America did not surrender their right to open negotiations at any time in the future concerning the inclusion of this position in their agreement, and subject remains dormant.

(4) It would be unprecedented and at variance with the Labor Act to concede that the Brotherhood of Railroad Trainmen has the right to legislate for positions of General Yardmasters which have been—by Agreement with the Railroad Yardmasters of America and in accordance with I. C. C. Ex Parte 72—omitted as set forth in Section (b), Article 10 of their Agreement. It is imperative that if these men are to be represented, as contemplated by the B. R. T., such representation belong to the Railroad Yardmasters of America, which Organization holds all rights and privileges provided by the Railway Labor Act with respect to representation of Yardmasters employed on Southern Pacific, Pacific Lines, and, as before stated, this subject remains dormant and is subject to a re-opening at any time either by the Carrier or the Railroad Yardmasters of America. In fact, some 6 months subsequent to signing Agreement, in negotiations with representatives of the Yardmasters' Organization, General Yardmaster at Bakersfield and General Yardmaster at Tucson have been included in Yardmasters' Agreement. Should the Brotherhood of Railroad Trainmen be sustained and given the right to legislate for General Yardmaster at Eugene, by the same token they will assume the right to represent all other General Yardmasters omitted under Article 10, Section (b), Yardmasters' Agreement, i.e., Oakland, San Francisco, Los Angeles, San Jose, Brooklyn, Sacramento, Roseville, and Fresno, thereby usurping the legal rights

guaranteed the Railroad Yardmasters of America under the Railway Labor Act, as well as nullifying Article 10, Section (b), Yardmasters' Agreement. In other words, the position assumed by the Brotherhood of Railroad Trainmen is in conflict with the rights and prerogatives of the Yardmasters' Organization and is in conflict with Agreement negotiated and now in effect between the Yardmasters' Organization and the carrier, also is in conflict with Section 2, Ninth, of the Railway Labor Act as amended, and Certification under said Act, September 17, 1937, by the National Mediation Board, authorizing the Railroad Yardmasters of America to represent General Yardmasters (except those coming under provisions of Ex Parte 72 of the I. C. C.), Assistant General Yardmasters, Assistant Yardmasters, Yardmasters and relief yardmasters for the purpose of the Railway Labor Act.

The facts and records herein submitted, we believe prove beyond any question of doubt that the carrier acted within its rights in selecting Mr. J. A. Copeland to fill the position of General Yardmaster at Eugene, also that the carrier was acting within its rights in denying claim of Mr. Chapman, September 11, 1937 and subsequent dates, and respectfully request your Honorable Board to so decide.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

Carrier requests the privilege of an oral hearing.

(Exhibits not reproduced.)

Findings: The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The record in this case discloses that:

(1) In appointing Mr. J. A. Copeland as General Yardmaster at Eugene, Oregon on September 7, 1937, the carrier did not comply with its agreement of July 9, 1936, prescribing the method of filling positions of Yardmaster which provided that, except at large and important ter-

minals, such positions would be filled from a "protected list," or a roster of those having seniority at the yard in question.

(2) The carrier's violation of its agreement of July 9, 1936, was terminated on February 1, 1938, the effective date of an agreement between the carrier and the Railroad Yardmasters of America, an organization certified by the National Mediation Board on September 17, 1937, as duly authorized to represent yardmasters, because this agreement in Section (b) Article 10, specifically exempted the Day General Yardmaster at Eugene from the agreement, and thus exempted the carrier from restrictions in filling the position.

Award

Claim sustained and to be adjusted per Findings.

National Railroad Adjustment Board
By Order of First Division
Attest: (Sgd.) T. S. McFarland,
Secretary.

Dated at Chicago, Illinois, this 24th day of August, 1939.

36 EXHIBIT "F".

Award No. 4150
Docket No. 6549

NATIONAL RAILROAD ADJUSTMENT BOARD.

First Division.

The First Division consisted of the regular members and and in addition Referee Frank M. Swacker when award was rendered.

Parties to Dispute:

Brotherhood of Railroad Trainmen,
Northern Pacific Terminal Company of Oregon.

Statement Of Claim: Claim of C. E. Halbrook for the difference between what he earned as a switchman and what he would have earned as a yardmaster, period October 6, 1936, continuing until placed as yardmaster in accordance

with his date on the consolidated roster of switchmen and yardmasters.

Employes' Statement of Facts: C. E. Halbrook and F. H. Long date as yardmen as of August 20, 1920 and September 15, 1920, respectively. In September 1935 a vacancy occurred for a position as assistant yardmaster on the 11:00 P. M. shift and Halbrook orally declined to accept the job stating to the General Yardmaster that he elected to work as a switchman until he could hold a job as yardmaster on the first or second shift. Long accepted the job. Prior to that time neither of these men had ever held a regular job as yardmaster but both had taken their turn as relief yardmaster. On or about October 6, 1936, the position of assistant yardmaster on the 3:00 P. M. shift became vacant and both Halbrook and Long asked for it. Long was assigned. Since that time Halbrook has been used in his turn as relief yardmaster. Claim is that Halbrook is senior to Long as yardmaster, therefore should have been assigned to the 3:00 P. M. job in preference to Long.

Claim is based on rules, agreements, settlements and letters exchanged between the management and interested employes as copied below:

Yardmen's Agreement

Article 1—Terms of Agreement and Terminating Clause

Effective March 1, 1928, the following articles constitute in their entirety the agreement between the Northern Pacific Terminal Company of Oregon and its yardmen. This agreement supersedes all previous schedules and rules governing rates of pay and working conditions of yardmen and shall remain in effect until thirty (30) days' notice in writing shall have been given by either party of a desire to change or terminate the same or any part thereof.

It is understood and agreed that this agreement is superseded by and subordinate to any subsequent municipal, state or federal legislation.

Article 16—Promotion and Rights

(C) The seniority rights of yardmen will date from the time they enter the service in the yards or terminal where employed.

(D) The rights to preference of work and promotion will be governed by seniority in service, everything being

equal the yardman longest in service will be given the preference.

(E) In the appointment of yardmasters and assistant yardmasters the oldest qualified yardman will be given consideration.

Article 17—Seniority Lists

(A) Yardmen's seniority lists will be kept in yard office, open to inspection by yardmen.

The following letter constitutes a three-way agreement between the committee representing yardmen, a committee representing the yardmasters and the management of the Northern Paeific Terminal Company of Oregon and has never been canceled by agreement between the parties nor have the yardmen's committee ever been requested by the other parties to consider its cancellation:

The Northern Pacific Terminal Company
Of Oregon
Office of Manager

B. E. Palmer
Manager

Portland, Oregon, June 5, 1931
File E-14-1

Mr. A. J. Jack, Chairman
Brotherhood of Railroad Trainmen
Mr. J. B. Bell, Secretary
Mr. J. A. Kirkpatrick, Associate

Gentlemen:

The committee representing the Brotherhood of Railroad Trainmen on June 3, 1931, presented the following requests.

First. Yardmasters' seniority roster will be abolished.

Second. One seniority list will be in effect governing all yardmen, yardmasters, Assistant Yardmasters and Relief Yardmasters.

Third. In the appointment of Yardmasters or Assistant Yardmasters the oldest qualified yardman will be given preference.

Fourth. For relief work the oldest qualified available man on each shift shall be used.

Fifth. Men now working regular position as Yardmas-

ters or Assistant Yardmasters will not be disturbed by this agreement.

The Northern Pacific Terminal Company is now in agreement with the Brotherhood of Railroad Trainmen as to working conditions and rates of pay as applied to yard service. In that agreement the seniority rule reads:

1. The seniority rights of yardmen will date from the time they enter the service in the yard or terminal where employed.

2. In the appointment of Yardmasters and Assistant Yardmasters the oldest qualified Yardman will be given consideration.

3. Yardmen's seniority lists will be kept in yard office open to inspection by yardmen.

4. Chairman will be furnished copies of seniority list upon request.

Effective September 1, 1923, an agreement was made with the Yardmasters' Association covering working conditions and rates of pay of Yardmasters and Assistant Yardmasters of the Northern Pacific Terminal Company. The following clauses affect seniority and promotion under the Yardmasters Agreement:

1st. Scope. The term Yardmaster shall apply to Assistant General Yardmaster, Yardmasters and Assistant Yardmasters but will not apply to General Yardmasters or so-called foot board Yardmasters.

2nd. Promotion. Assistant General Yardmasters, Yardmasters and Assistant Yardmasters are subordinate officials and in making promotion, merit, fitness and ability will govern.

3rd. Retaining Seniority. Yardmasters when displaced as such on account of reduction of force or for other reasons, will be restored to the ranks from which promoted without loss of seniority where it does not conflict with existing agreements.

Under this agreement Yardmasters' seniority list has been compiled and posted. To comply with your request as to one seniority list will necessitate the joint agreement of the authorized representative of both the Brotherhood of Railroad Trainmen and the Yardmasters' Association. With this joint approval I am willing to approve the follow-

ing rules somewhat modified from your submission and with the understanding that the approval and acceptance in no way changes the general terms or understanding of the separate agreements:

First. One seniority roster will be maintained governing Yardmen, Yardmasters, Assistant Yardmasters and Relief Yardmasters.

Second. In the appointment of Yardmasters and Assistant Yardmasters, fitness and ability being sufficient the oldest qualified yardman will be given preference.

Third. For relief work the oldest qualified available man on each shift shall be used.

Fourth. Men now working regular positions as Yardmasters or Assistant Yardmaster will not be disturbed by this agreement.

Fifth. The Yardmen's seniority roster dated January 5, 1931, shall be considered permanent and not subject to question or change hereafter and it is understood as permanently fixing the dates of all names thereon.

If the above items one to five are acceptable to the regularly authorized representatives of both the Brotherhood of Railroad Trainmen and the Yardmasters' Association, they will be considered as an interpretation and application of the seniority rules and will not be considered as in any other way affecting the agreements above referred to.

An acceptance by the authorized representatives of this letter will be considered in full effect as of June 5, 1931.

Yours truly,

(Signed) B. E. Palmer,
Manager.

Accepted:

(Signed) A. J. Jack (General Chairman, B. R. T.)

(Signed) J. A. Kirkpatrick, (Committeeman, B. R. T.)

(Signed) J. B. Bell, (Committeeman, B. R. T.)

(Signed) Verdi Berg, (For Yardmasters' Association)

The following men were working regularly as yardmasters at the time the above agreement was made:

F. S. Gollings, J. A. Rannie, J. A. Humble, V. Berg, T. E. Furlong, Geo. Worden and Chas. Weston.

The following two letters relate to the above rules and understandings and are fully explanatory:

Portland, Oregon, July 3rd, 1933.

Mr. B. E. Palmer
General Manager, N. P. Terminal Co.
Portland, Oregon

Dear Sir:

There seems to be some misunderstanding or rather a difference of opinion as to an interpretation of seniority rule for Yardmasters in the Yardmasters agreement.

Would like to have an interpretation on the following, for instance, "A vacancy occurs on some trick, and the man eligible for the position from a point of seniority and fitness, etc., and has a date as Yardmaster, wishes to decline the position, account of sickness or other reasons."

Would he lose his date as Yardmaster, or would he retain his date and be eligible for the next vacancy?

Yours truly,
(Signed) V. Berg,
Chairman Yardmasters Ass'n.,
N. P. Terminal Co.

Portland, Oregon, July 6, 1933.

B. E. Palmer
Manager
Mr. Verdi Berg, Chairman
Yardmasters' Association
N. P. Terminal Company
Portland, Oregon

Dear Sir:

Your letter of July 3rd, 1933.

The yardmaster is not compelled to bid in or accept a new job or promotion. If the job is awarded to him by bid or assignment, on his request, he must accept. There would be no change in his seniority date on the list. Yardmasters should accept and protect the service when the job is offered, otherwise the question of fitness and ability might be raised against them in future jobs.

Yours truly,
(Signed) B. E. Palmer.

The following was the Agreement between the Yardmasters and the Company at the time the three-way Agreement between the Yardmen, the Yardmasters and the Management was entered into June 5, 1931, and was the Agreement in effect October 6, 1936, when this claim arose:

Agreement

(Effective Sept. 1, 1923)

Between the

The Northern Pacific Terminal Company of Oregon

and

The Yardmasters' Association Comprised of the Assistant General Yardmasters, Yardmasters and Assistant Yardmasters, Employes of the Northern Pacific Terminal Company.

Preamble

These principles are predicated upon the obligation of each Yardmaster to render honest, efficient and economical service to the railroads and to the public.

The spirit of cooperation between the management and the yardmasters being essential to efficient operation, both parties will so conduct themselves as to promote this spirit.

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1. Scope: The term "yardmaster" shall apply to Assistant general yardmasters, yardmasters and assistant yardmasters, but will not apply to General yardmasters or so-called footboard yardmasters.

2. Promotion: Assistant general yardmasters, yardmasters and assistant yardmasters are subordinate officials, and in making promotions, merit, fitness and ability will govern.

3. Vacations: Yardmasters who have been acting in that capacity continuously one (1) year or more will be allowed two weeks vacation each year with pay.

4. Rest Days: Yardmasters regularly assigned seven (7) days per week will be granted two (2) rest days per month without loss of pay, except for the month vacation

is given; these two (2) rest days off shall be arranged between the yardmasters and their superior officers.

5. Filling Temporary Vacancies: When a regularly assigned yardmaster is required to perform service other than regular duties, the rate of pay will not be less than his regular salary for days so used. When a yardmaster is required to substitute in a position paid a higher rate, he will assume the salary and the hours applicable to the position to which assigned.

6. Retaining Seniority: Yardmasters, when displaced as such on account of reduction in force, or for other reasons, will be restored to the ranks from which promoted without loss of seniority, where it does not conflict with existing agreements.

7. Assignments: Assignments for yardmasters and assistant yardmasters exclusive of an agreed upon meal period normally will be for eight (8) hours. Where the operating conditions fairly warrant assignments for nine (9), ten (10) or eleven (11) hours such assignments may be made. Monthly salaries set forth in the following rule for assistant general yardmasters are established for unassigned hours, and for yardmasters and assistant yardmasters are for assignment of eight (8) hours. The salaries for nine (9), ten (10) and eleven (11) hour assignments will be computed pro-rata for the hours assigned based on the salary provided herein applicable to the respective yard or point involved.

8. Monthly Salaries:

Assistant General Yardmaster	$310.00
Yardmasters	255.00
Asst. Yardmasters	230.00

9. Date Effective and Changes: The foregoing in its entirety constitutes an agreement between the Northern Pacific Terminal Company of Oregon and the Yardmasters' Association, of The Northern Pacific Terminal Company and will remain in effect one (1) year from effective date (September 1, 1923), and thereafter subject to thirty (30) days written notice, by either party to the the other of a desire to change or terminate the same or any part thereof.

For the Yardmasters' Association—The Northern Pacific Terminal Company
(Signed) V. Berg.

For the Northern Pacific Terminal Company of Oregon
(Signed) B. E. Palmer,
Manager.

The following is an agreement entered into between the yardmasters and the management December 18, 1937, and is still in effect:

Agreement

Between the

Northern Pacific Terminal Company of Oregon

And the

Railroad Yardmasters of America

Scope

Rule No. 1. This Agreement shall apply to the positions of Assistant General Yardmasters, Yardmasters, and Assistant Yardmasters in existence during the life of this Agreement. It is mutually agreed that the positions of General Yardmaster does not come within the scope of this Agreement, and are in no way affected by the terms of this Agreement.

Hours of Service

Rule No. 2. Eight consecutive hours, exclusive time transferring in going on or off shifts, shall constitute a day's work for Assistant General Yardmasters, Yardmasters, and Assistant Yardmasters.

Rates of Pay

Rule No. 3. The monthly rates of pay for eight hours' service per day for the calendar month shall be as follows:

Location Title	Monthly Salary
Portland Assistant General Yardmaster	$313.20
Portland Yardmaster	288.20
Portland Assistant Yardmaster	258.20

Calculation of Rates

Rule No. 4. Day's pay will be computed on basis of calendar day month. Less two days.

New Positions

Rule No. 5. Salaries of new positions shall be in conformity with salaries for positions of similar kind or class at the point established.

Temporary Vacancies

Rule No. 6. Assistant General Yardmasters, Yardmasters or Assistant Yardmasters taken from their assignments to perform temporary service in lower rated positions shall not have their rates reduced and when temporary or permanently assigned to higher rated positions they will receive the higher rates while occupying such positions.

Rest Days

Rule No. 7. Assistant General Yardmasters, Yardmasters and Assistant Yardmasters who are regularly assigned will be granted two (2) rest days per month without loss of pay, to be arranged between them and their superior officers.

Vacations

Rule No. 8. Assistant General Yardmasters, Yardmasters and Assistant Yardmasters who have been continuously in service one year or more in such positions will be allowed two (2) weeks' vacation with pay per annum.

Limitation of Work

Rule No. 9. Assistant General Yardmasters, Yardmasters, Assistant Yardmasters will not be required to bleed cars or couple up air where carmen are employed.

Seniority

Rule No. 10. Seniority of Assistant General Yardmasters, Yardmasters and Assistant Yardmasters shall date from date of regular assignment to such positions and will be restricted the terminal at which employed.

(b) Promotion will be based on fitness, ability and seniority. The management to be the judge.

(c) Fitness and ability being equal, the oldest yardmaster or assistant yardmaster in a point of senority will be given preference as to assignments.

(d) Assistant general yardmasters, yardmaster or assistant yardmasters promoted to official positions with the Terminal Company or granted leaves of absence in connection with committee work, will retain and accumulate seniority under this Agreement.

(e) Assistant general yardmasters, yardmasters or assistant yardmasters laid off in reduction in force will retain seniority and will be used for extra or relief work when available.

(f) A correct seniority list shall be maintained in the general yardmasters or manager's office, available to all employes covered by this Agreement.

Adjustment Procedure

Rule No. 11. Any Assistant General Yardmaster, Yardmaster or Assistant Yardmaster who feels he has been unjustly treated will: Provided written request is presented to his immediate superior within five (5) days of the date of advice of such alleged unjust treatment be accorded a hearing and the right to appeal to his superior officers up to and including the highest officer designated to hear such cases.

Date Effective and Changes

Rule No. 12. This Agreement shall be effective as of December 18, 1937, and shall continue in effect subject to thirty (30) days' notice from either party of desire to revise or terminate the same or any part thereof.

For the Railroad Yardmasters of America
By: (Signed) Sidney A. White
General Chairman
(Signed) Frank W. Long

For the Northern Pacific Company of Oregon
By: (Signed) H. D. Mudgett
Manager
Approved
(Signed) E. L. King

The following two letters constitute a submission and a settlement of a case involving a dispute as to the application of paragraph 3 of the three-way Agreement of June 5, 1931:

Portland, Oregon
January 24, 1935

File N. P. T.-1

Mr. B. E. Palmer, Manager
N. P. T. Co. of Oregon
Terminal Depot Bldg.
Portland, Oregon

Dear Sir:

Submitting claim of Yardman E. B. Estes for difference between time allowed as a switchman and time claimed as relief yardmaster on third trick from December 6, 1934, until the regular man returns or Mr. Estes is placed as relief yardmaster.

The decision of Yardmaster Humble as contained in his letter of December 8th to Mr. Estes is not satisfactory and the claim is appealed to you.

Statement of Facts: A three-way agreement was entered into by the committee representing switchmen, the chairman for the yardmasters and the management, the agreement being dated June 5, 1931, paragraph 1 to 5 inclusive thereof reading as follows:

"1. One seniority roster will be maintained governing yardmen, yardmasters, assistant yardmasters and relief yardmasters.

2. In the appointment of yardmasters and assistant yardmasters, fitness and ability being sufficient, the oldest qualified yardman will be given preference.

3. For relief work the oldest qualified available man on each shift shall be used.

4. Men now working regular positions as yardmasters or assistant yardmasters will not be disturbed by this agreement.

5. The yardmasters seniority roster dated January 5, 1931, shall be considered permanent and not subject to question or change hereafter and it is understood as permanently fixing the dates of all names thereon."

Mr. Estes, with the exception of about three months, did

all of the relief work on the third trick. On November 22, 1934, the regular yardmaster of this trick found it necessary to lay off and go to the hospital for an operation and Mr. Estes worked in his place from that date until the 27th inclusive, laid off for three days and then did the yardmaster's work until December 5th inclusive, at which time he was relieved by the regular assigned assistant yardmaster of the second trick; and this yardmaster was in turn relieved by an engine foreman of the first trick. Claim is for the difference in earnings on basis of the agreement above quoted.

Position of Committee: It is the contention of the committee that claim is sustained by the agreement and failure to handle as agreed entitles Mr. Estes to the difference in earnings.

Will be glad to discuss this claim with you at your early convenience.

Yours truly,
(Signed) C. W. Stevens,
General Chairman

The Northern Pacific Terminal Company
Of Oregon

Portland, Oregon
December 4, 1936

File E-4-2

Mr. C. W. Stevens, Gen. Chairman
Brotherhood of Railroad Trainmen
45 Rose Friend Apartments
Portland, Oregon

Dear Sir:

This is to advise that the claim of Yardman E. B. Estes for the difference between yardmaster's rate yardman's rate from December 5, 1934, to January 20, 1935, will be paid.

Yours truly,
(Signed) H. D. Mudgett,
Manager

cc: QRA
JAH

The employes desire to be represented at the hearing of this claim.

Position of the Employes: (1) The employes contend that the Agreement of June 5, 1931, between the yardmasters, yardmen and management, established one consolidated seniority roster of yardmen and yardmasters, except that according to its terms men working as yardmasters at that time thereafter retained a prior seniority right over all others as yardmaster; that subsequent to this agreement all yardmen have a right as yardmaster in accordance with their date as yardmen, subject only to the qualification provided for in Article 16 Section (E) of the Yardmen's Agreement and the admitted prior right of yardmasters working as such at the time the agreement was signed; that neither Mr. Long or Mr. Halbrook were working regularly as yardmaster June 5, 1931, therefore, Mr. Halbrook being senior to Mr. Long as a yardman is senior to him on the consolidated roster and, accordingly, is senior to him as a yardmaster; that subsequent to this agreement no yardman can properly secure a prior right as yardmaster over a senior yardman by bidding in a job as yardmaster, nor does a senior man failing to bid for and accept a position as yardmaster lose any yardmaster rights; that the question of competency is not herein involved, because Mr. Halbrook has proven he is qualified to act as yardmaster by services as such prior to October 6, 1936, and by service as yardmaster many times since then in compliance with the third provision of the agreement, and that failure to assign him as yardmaster on the 3:00 P. M. shift October 6, 1936, entitles him, under the principles of seniority, to the difference in earnings as claimed.

(2) The employes further contend that the Agreement of June 5, 1931, did not affect or change either the Yardmen's or Yardmasters' Agreements as then existing, but was merely supplementary thereto. The Yardmasters' Agreement of September 1, 1923, contained no seniority rules. The Agreement of June 5, 1931, duly signed by the committee representing the yardmasters, provided specific seniority rules, giving yardmasters, then working, a prior right over men their senior as yardmen and gave all other yardmen a right as yardmaster in accordance with their date as yardman. It will be noted that the yardmasters revised Agreement of December 18, 1937, is at variance in

some of its provisions with the Agreement of June 5, 1931. The committee representing yardmen received no notice of the contemplated change, as required by Article 1 of its Agreement with the carrier and as required by the Railroad Labor Act, therefore, we regard such provisions as a nullity insofar as they seek to modify the three-way agreement. Rules 10 (a), 10 (c), 10 (e) and 10 (f) are at variance with and are opposed to the requirements of the First, Second and Fifth sections of the Agreement of June 5, 1931; rule 10 (b), if intended to cover promotion from yardman to yardmaster, conflicts with both the three-way agreement and Article 16 (E) of the Yardmen's Agreement.

Mr. Berg's letter of July 3, 1933, and Mr. Palmer's reply of July 6, 1933, we think, shows conclusively that both the management and the representatives of the yardmasters fully understood that men holding yardmaster's right (the consolidated roster), may elect to work as a yardman without prejudice to his rights as a yardmaster.

The settlement in the Estes case December 4, 1936, as shown by letters copied herein, illustrates, we think, that while the management was inclined to dispute the meaning of the third section of the Agreement of June 5, 1931, they nevertheless conceded the validity of the rule when they paid the claim. The employes urge that if the third section of the Agreement is regarded as valid the other sections must likewise be regarded as valid and, furthermare, that the intention of the three parties was clearly set forth in Mr. Palmer's letter of June 5, 1931 in which he analyzed rules in both the yardmen's and the yardmasters' schedules and concluded that the Agreement asked for by the yardmen and by the yardmasters would necessarily require the joint concurrence of the two organizations and of the management, and it follows that when the Agreement was signed it became effective and the rights therein established cannot be arbitrarily set aside except by conference and agreement between the parties as provided for in the Railroad Labor Act.

Carrier's Statement of Facts: This is a claim by Mr. C. E. Halbrook that under the provisions of the Northern Pacific Terminal Company of Oregon's schedule for yardmen and interpretation thereof contained in letter agreement dated June 5, 1931, that he should have been appointed

to the second trick (3:00 P. M. to 11:00 P. M.), Assistant Yardmaster's position at Guild's Lake Yard in September, 1936.

Mr. Halbrook's claim is not based on the provisions of the agreement between the Northern Pacific Terminal Company of Oregon and the Yardmasters' Association. The First Division of the National Railroad Adjustment Board would not have jurisdiction to hear and decide a claim growing out of the interpretation and application of the Yardmasters' Agreement.

The Northern Pacific Terminal Company of Oregon performs freight, passenger and industry switching in the City of Portland, Oregon, serving the Northern Pacific, Southern Pacific, Union Pacific, S. P. & S. and Great Northern Railways. The yardmasters' force on the Terminal property consists of a General Yardmaster, an Assistant General Yardmaster, two Yardmasters and five Assistant Yardmasters. There are three main yards of the Terminal Company, namely; Union Station Yard, where passenger trains are handled; Depot Freight Yard which is in close proximity to the Union Station Yard; and Guild's Lake Yard, which is two miles from the Union Station Yard. Guild's Lake Yard is a freight classification yard. Roundhouse, storeroom, car repair and coach cleaning forces are located at Guild's Lake. In addition nine major industries are served in this yard.

Mr. Halbrook has a seniority date as yardman of August 20, 1920. Mr. F. W. Long has a seniority date as yardman of September 15, 1920. Mr. J. T. Beach has a seniority date as yardman of June 23, 1913.

In October, 1935, it was necessary to make an appointment of an Assistant Yardmaster on the third trick (11:00 P. M. to 7:00 A. M.), at the Depot Yard. This appointment was offered to Mr. E. C. Halbrook. The offer of this appointment to Mr. Halbrook was on the basis of his seniority as a yardman under the provisions of Rule 16 (e) of the Yardmen's Agreement. The position of third trick Assistant Yardmaster at the Depot Yard was at that time a comparatively light Assistant Yardmaster's job. General Yardmaster Humble told Mr. Halbrook that if he accepted the appointment he would be given assistance on the position. This assistance would be furnished by the General Yardmaster himself, and by the Yardmaster located at

the Union Station whose hours of duty were 11:00 P. M. to 7:00 A. M. The Union Station is located in close proximity to the Depot Yard and the peak passenger business is over at midnight.

Mr. Halbrook declined the appointment as Assistant Yardmaster in October, 1935. The appointment was then offered to Mr. F. W. Long who was junior to Mr. Halbrook as a yardman. Mr. Long accepted the appointment and was assigned third trick Assistant Yardmaster at the Depot Yard, which position he filled until his promotion to position of second trick Assistant Yardmaster at Lake Yard in September, 1936.

In September, 1936, position of Assistant General Yardmaster was created. Assistant Yardmaster E. W. Reece was promoted to this position. Mr. F. W. Long was promoted to the second trick Assistant Yardmaster's position at Lake Yard, and Mr. J. T. Beach, a yardman, was appointed as Assistant Yardmaster and assigned to Mr. Long's former position of third trick Assistant Yardmaster at the Depot Yard.

The only service that Mr. Halbrook performed as a yardmaster prior to September, 1936, consisted of twenty-seven days relief work between July, 1928, and March, 1929. Mr. Halbrook's seniority entitled him to work as a yard foreman on the second or third tricks, and had he performed such service he would have been in position to secure relief yardmaster's work on such tricks which would qualify him for appointment to an Assistant Yardmaster's position. However, he elected to work as a yard helper on the first trick instead of as a foreman on other tricks, and because of this he was not in line to perform relief yardmaster's work. Had Mr. Halbrook accepted the appointment to the Assistant Yardmaster's position in October, 1935, and continued to work as an Assistant Yardmaster he would have been in line in September, 1936, for promotion to the second trick Assistant Yardmaster's position at Guild's Lake Yard.

Rule 16 (e) of the Northern Pacific Terminal Company of Oregon's schedule for yardmen reads:

"In the appointment of yardmaster and assistant yardmasters, the oldest qualified yardman will be given consideration."

Carrier's Exhibit "A" is copy of agreement effective

September 1, 1923, between the Northern Pacific Terminal Company of Oregon and the Yardmasters' Association.

Carrier's Exhibit "B" is copy of letter of June 5, 1931, addressed to Messrs. A. J. Jack, J. B. Bell, J. A. Kirkpatrick, signed by Mr. B. E. Palmer, Manager of the Northern Pacific Terminal Company of Oregon, and accepted by Messrs. Jack, Kirkpatrick and Bell and also by Mr. Verdi Berg for the Yardmasters' Association.

Position of Carrier: There is no basis for Mr. Halbrook's claim under the provisions of Article 16 (e) of the Yardmen's Agreement or under the letter of June 5, 1931, as Mr. Long was not appointed as an Assistant Yardmaster in September, 1936. Mr. Long was promoted from one Assistant Yardmaster's position to another Assistant Yardmaster's position under the provisions of the Yardmasters' Agreement. Mr. Halbrook had acquired no rights under the Yardmasters' Agreement, and hence he would have no basis for a claim under that agreement because of the promotion of Mr. Long. This is recognized by Mr. Halbrook as his claim is based on the Yardmen's Agreement and interpretation thereof contained in letter of June 5, 1931, which deal with the appointment of yardmasters.

Mr. Halbrook was not a yardmaster at the time Mr. Long was promoted to the second trick Assistant Yardmaster's position at Lake Yard in September, 1936, as he had declined appointment to such a position the previous October. Mr. Long was a yardmaster at that time and had been a regular yardmaster since October, 1935. The promotion of Mr. Long was in conformity with the provisions of the Yardmasters' Agreement of September 1, 1923 (Carrier's Exhibit "A"), reading:

"2. Promotion: Assistant General Yardmasters, Yardmasters and Assistant Yardmasters are subordinate officials and in making promotions, merit, fitness and ability will govern."

Mr. Halbrook has no basis for claim because of the promotion of Mr. Long as Mr. Halbrook had not at that time been appointed to a yardmaster's position. If Mr. Halbrook has any basis for a claim because of the appointment of a yardmaster in September, 1936, it is because of the appointment of Mr. J. T. Beach which was the only appointment then made to a yardmaster's position. Mr. Beach is senior to Mr. Halbrook as a yardmaster, and, therefore,

under the provisions of the Yardmen's Agreement and under the letter of June 5, 1931 (Carrier's Exhibit "B"), Mr. Halbrook would have no basis for claim on the basis of seniority as a yardman because of the appointment of Mr. Beach. Had Mr. Long simply remained in his position as third trick Assistant Yardmaster, and a new appointment made to the second trick position in question, Mr. Beach and not Mr. Halbrook would have been appointed.

Article 16 (e) of the Yardmen's Agreement reads:

"In the appointment of yardmasters and assistant yardmasters, the oldest qualified yardman will be given consideration."

This rule applies when there is an appointment of a yardmaster or assistant yardmaster. Mr. Long was not appointed as an assistant yardmaster in September, 1936, but was simply promoted to a more favorable assistant yardmaster's position at that time after having been appointed to an assistant yardmaster's position in October, 1935. Therefore, Article 16 (e) of the Yardmen's Agreement would not sustain Mr. Halbrook's claim that he should have preference over Mr. Long because Article 16 (e) deals with appointments of yardmen to yardmasters' positions, and not with promotions of yardmasters.

The letter of June 5, 1931 (Carrier's Exhibit "B"), first recites five requests from the Brotherhood of Railroad Trainmen. The third request was for a change in Article 16 (e) of the Yardmen's Agreement by changing the last word from "consideration" to "preference." None of these requests dealt with changing the provisions of the promotion rule of the Yardmasters' Agreement.

The letter of June 5, 1931, next recites Article 16 (c) and (e) and Article 17 (a) and (b) of the Yardmen's Agreement. These are rules pertaining to seniority of yardmen.

The letter of June 5, 1931, then recites certain provisions of the Yardmasters' Agreement, viz. the scope rule, promotion rule and retaining seniority rule. After these recitations there are set out five specific things that were agreed to. Those that are here involved are:

"First: One seniority roster will be maintained governing yardmen, yardmaster, assistant yardmasters and relief yardmasters.

"Second: In the appointment of yardmasters and assistant yardmasters, fitness and ability being sufficient, the oldest qualified yardman will be given preference."

After the statement of what was agreed to be the following is said:

"If the above items one to five are acceptable to the regularly authorized representatives of both the Brotherhood of Railroad Trainmen and the Yardmasters' Association, they will be considered as an interpretation and application of the seniority rule and will not be considered as in any other way affecting the agreements above referred to.

"An acceptance by the authorized representatives of this letter will be considered in full effect as of June 5, 1931."

The letter was signed by Manager Palmer for the Terminal Company and accepted by Messrs. Jack, Kirkpatrick and Bell for the Brotherhood of Railroad Trainmen and by Mr. Berg for the Yardmasters' Association.

There is nothing contained in the letter of June 5, 1931, that changed the promotion rule of the Yardmasters' Agreement. To the contrary, it is perfectly clear from the letter of June 5, 1931, that that rule was not changed; the request presented by the Brotherhood of Railroad Trainmen and the specific things that were agreed to in the letter of June 5, 1931, did not include any change in the promotion rule of the Yardmasters' Agreement. The letter of June 5, 1931, specifically provided that there would be no change in the general terms of understandings of the separate agreements (Yardmen's and Yardmasters' Agreements), and that what was agreed to would be considered as an interpretation and application of the seniority rule, and not be considered as in any way affecting the agreements above referred to (Yardmen's and Yardmasters' Agreements). Therefore, as Mr. Long was promoted from one Assistant Yardmaster's position to another Assistant Yardmaster's position, this transaction was entirely within the terms of the Yardmasters' Agreement, which had not been changed by the letter of June 5, 1931. There would, therefore, be no basis for Mr. Halbrook's claim under the provisions of the Yardmasters' Agreement as Mr. Halbrook was not a yardmaster.

In the presentation of this claim Mr. Halbrook relies on that portion of what was agreed to in the letter of June 5, 1931, reading:

"First: One seniority roster will be maintained governing yardmen, yardmasters, assistant yardmasters and relief yardmasters."

If Mr. Halbrook is correct that by virtue of his seniority as a yardman he was entitled to the second trick Assistant Yardmaster's position in September, 1936, then there would have been no necessity for that provision of the letter of June 5, 1931, which related to appointments of yardmasters, as on Mr. Halbrook's theory a yardman already held rights as a yardmaster because of his yardman's seniority. Furthermore, if Mr. Halbrook is correct, then the provisions of the promotion rule of the Yardmasters' Agreement were set aside by the letter of June 5, 1931. Obviously, Mr. Halbrook cannot be right in his contention as the letter of June 5, 1931, recognized:

First: That the promotion rule of the Yardmasters' Agreement was not changed, and;

Secondly: That there would be appointments of yardmasters from yardmen on the basis of yardmen's seniority.

To arrive at the result which Mr. Halbrook is seeking it is necessary that the express provisions of the Yardmasters' Agreement, the Yardmen's Agreement, and the letter of June 5, 1931, be entirely disregarded.

If Mr. Halbrook has any basis for a claim because of the appointment of a yardmaster in September, 1936, it is because of the appointment of Mr. Beach, as the only yardmaster that was appointed in September, 1936, was Mr. Beach. Mr. Halbrook had not attempted to displace Mr. Long on the third trick Assistant Yardmaster's position, apparently recognizing that he would have no right to do so. Had Mr. Long remained on the third trick position, and had Mr. Beach been appointed as yardmaster and assigned to the second trick position in September, 1936, the only basis for a claim by Mr. Halbrook would have been because of the appointment of Mr. Beach. Mr. Halbrook had no more right in September, 1936, to displace Mr. Long on the second trick position than he would have had to have displaced him on the third trick position. Mr. Long was then a yardmaster and had been in that status since the previous October; Mr. Halbrook was in September, 1936, and during his entire service with the Terminal Company prior thereto, in the status of a yardman.

Mr. Halbrook's claim must be based on the premise that he could pass up a yardmaster's position at will and later when some desirable position was vacant or when it suited his fancy, displace a yardmaster who had previously been appointed to and continued to fill a yardmaster's position.

This certainly would not be fair to his fellow employes. If Mr. Halbrook is correct then other yardmen would have the same right and men who accept yardmasters' positions would be in continual jeopardy of being displaced from such positions. Such a condition was never contemplated by the Terminal Company. The Terminal Company is satisfied that neither the representatives of the employes who accepted the letter of June 5, 1931, nor the employes whom they represented, would have subscribed to anything that would have brought about such a condition.

Mr. Halbrook's claim cannot be sustained because:

1. Article 16 (e) of the Yardmen's Agreement and interpretation thereof contained in letter dated June 5, 1931, deals with the appointment of yardmen to yardmasters. Mr. Long was not appointed from a yardman's position to an assistant yardmaster's position in September, 1936. Therefore, as between Mr. Halbrook and Mr. Long it was not a case of preference of appointment from a yardman's to a yardmaster's position. Consequently, Article 16 (e) of the Yardmen's Agreement and interpretation thereof contained in letter dated June 5, 1931, does not sustain Mr. Halbrook's claim.

2. The promotion of yardmasters is governed by the Yardmasters' Agreement. The letter of June 5, 1931, did not change the promotion rule of the Yardmasters' Agreement. Until Mr. Halbrook established the status of a yardmaster he would have no basis for a claim under the Yardmasters' Agreement because of the promotion of men covered by that agreement.

3. The seniority provision of the letter of June 5, 1931, did not give yardmen any rights except when there was to be an appointment of a yardmaster. This was a preservation of the rights of yardmen under the Yardmen's schedule. If, as Mr. Halbrook contends, the seniority provisions of the letter of June 5, 1931, gave him rights which he could exercise over Mr. Long when the latter was promoted within the terms of the Yardmasters' Agreement, then the provisions of Article 16 (e) of the Yardmen's Agreement were superseded by that letter, the provisions of the Yardmasters' Agreement were set aside and the provisions of that letter about appointment of yardmasters is meaningless; no such intent or result can be read into the letter of June 5, 1931.

Oral hearing is desired.

Findings: The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The transfer of Mr. Long from the third trick to the second trick was not a "promotion" his rank on each trick being the same i. e., assistant yardmaster. Accordingly under the terms of the three party agreement of June 5, 1931, Mr. Halbrook by virtue of his seniority was entitled to preference in appointment to fill vacancy. The claim however should be for the difference between amount earned and pay of assistant yardmaster rather than yardmaster and will be sustained to that extent.

Award

Claim sustained to extent indicated by Findings.

National Railroad Adjustment Board
by Order of First Division
Attest: (Sgd.) T. S. McFarland,
Secretary

Dated at Chicago, Illinois, this 15th day of September, 1939.

EXHIBIT "G".

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Award No. 2712
Docket No. 4504

NATIONAL RAILROAD ADJUSTMENT BOARD

First Division

The First Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

Parties to Dispute:

Brotherhood of Railroad Trainmen

The Denver and Rio Grande Western Railroad Company

Statement of Claim: Claim of F. L. Ellis, Assistant Yardmaster, Burnham, for time lost while out of service from September 21st, for his alleged responsibility in mishandling M. P. 77386, Autos consigned to Ford Motor Company. Article 16 (e) of the Yard Schedule.

Joint Statement of Facts: Following investigation held at Burnham September 19, 1936, to determine responsibility in connection with delay to M. P. 77386 autos consigned to Ford Motor Company, Assistant Yardmaster Saunders and Ellis were discharged from service of the Company and claimed pay for time lost. Claim for time while out of service was denied by the Management.

This claim is for $7.53 per day for each employe.

Oral hearing is desired in this case.

Position of Employes: Assistant Yardmaster S. J. Saunders working as Night Yardmaster was taken out of service September 17, 1936, and F. L. Ellis, Assistant Yardmaster, was taken out of service September 21st. Following investigation held September 19th, they received the following letter:

"This is to advise you that as result of formal investigation held at Burnham September 19th, in connection with delay to MP 77386, autos, consigned to the Ford Motor Company at Denver, you are discharged from the service

of this Company for your responsibility in mishandling this car."

There was no evidence developed at the investigation that consist of train First 66 with car of autos was delivered to the yard office at Burnham or Denver.

The evidence shows that Night Yardmaster Saunders was required to leave his work as Night Yardmaster and assist the Engine Foreman with his work in order to avoid delay to passenger trains Second 15, Nos. 1 and 16, as shown on pages 3 and 4 of the transcript.

The evidence further shows on page 6 that protest was previously made to the Chief Clerk and General Yardmaster in reference to calling Mr. Devore as an Engine Foreman.

The evidence shows on pages 6 and 7 that Assistant Yardmaster Ellis received no information there was a car of autos on train First 66.

There was a new operator at Burnham who was not familiar with the work and could not furnish the information that was furnished previous to the 17th, giving the numbers of cars and list on the phone of contents and for what line.

The evidence further shows on page 8 that in looking over the consists of different trains there was no consist of train First 66, and that he had a new man on the lead engine, and as shown on page 9, both of the main lines blocked.

The following taken from the report shows that:

"Yard conditions were admittedly bad in 7th Street Yard on the morning in question and the Foreman used on one of the engines was not sufficiently familiar with the work to handle his work properly. Also the operator on duty on third trick, Burnham, has worked this job for only a short time, and he also did not seem to click very well. However, even with these disabilities it was the responsibility of the Assistant Yardmaster as well as the Night Yardmaster to have informed themselves from the consist of First 66 or the switch list of this train, or to even have checked the carding if necessary to be in a position to carry out instructions on the handling of this business. Both of these employes admitted they did not know there was a car of autos for Ford Motor Company on First 66, and the car was worked through the terminal into the C&S transfer through the regular routine."

The foregoing shows the yard conditions were bad, the

help furnished was incompetent due to lack of experience, which is the responsibility of the Carrier and not of either Acting Night Yardmaster Saunders or Assistant Yardmaster Ellis.

Position of Carrier: As result of investigation held at Burnham (Denver) September 19, 1936, to determine responsibility in connection with delay to Missouri Pacific car 77386, loaded with automobiles and consigned to the Ford Motor Co., Denver, arriving on first 66 at 4:20 A. M. September 17th, Assistant Yardmaster S. J. Saunders, acting as night yardmaster, and Assistant Yardmaster F. L. Ellis were dismissed from the service.

The Carrier contends the facts developed at the investigation, transcript of which is attached hereto as supporting evidence, fully justified the permanent dismissal of Messrs. Saunders and Ellis, and holds that in view of the subsequent reinstatement of these employes on a leniency basis there is no justification under the rules for this particular claim.

Transcript of investigation held in the office of the Trainmaster, Burnham, 4:30 P. M., September 19, 1936, in connection with failure to handle MP 77386, autos, consigned to the Ford Motor Company, Denver, arriving Denver First 66 at 4:20 A. M., September 17th.

For the Company—

J. E. Kemp, Trainmaster
A. E. Rice, Master Mechanic

Principals and representatives—

S. J. Saunders, Asst. Yardmaster, represented by Mr. Oscar Fields, Switchman.
F. L. Ellis, Asst. Yardmaster, represented by Mr. L. B. Albaugh, Switchman.

Questions by Mr. Kemp:

Gentlemen: This investigation is being held to ascertain facts and determine responsibility in connection with delay in delivering to C&S of MP 77386, autos, consigned to the Ford Motor Company, Denver, arriving Denver First 66 at 4:20 A. M., September 17th. Principals in this investigation are Mr. S. J. Saunders, who was acting night yardmaster, and Mr. F. L. Ellis, assistant yardmaster.

Q. Mr. Saunders, did you receive notice to attend this investigation?

A. Yes, sir.
Q. Have you a representative?
A. Yes, Mr. Oscar Fields, switchman.
Q. Are you ready to proceed?
A. Yes, sir.
Q. Mr. Ellis, did you receive notice to attend this investigation?
A. Yes, sir.
Q. Have you a representative?
A. Yes, Mr. L. B. Albaugh, switchman.
Q. Are you ready to proceed?
A. Yes, sir.

Testimony of Mr. S. J. Saunders—Questions by Mr. Kemp.

Q. Your name?
A. S. J. Saunders.
Q. Age?
A. 48.
Q. Occupation?
A. Night Yardmaster.
Q. How long have you been in the service of the D&RGW?
A. Little better than twelve years.
(Statement.) Mr. Kemp: For the purpose of the record I want to state that we have been advised that we have lost the Ford business on account of our handling at Denver in switching of these cars.
Q. Mr. Saunders, tell me what you can about the handling of this car, MP 77386, autos for the Ford Motor Company, which arrived at Denver at 4:20 A. M. September 17th on First 66.
A. Well, I can't tell you anything wrong with the handling of it. I was engaged in other service at the time. I had to get out and handle an engine instead of doing my own work and was not in a position where I could help him. When I went to Denver I asked Mr. Ellis how he was doing and he said that he had that wooden headed Devore on the main line with about forty cars from the UP and said he didn't know where any of them went and asked me if I couldn't go out and help him get rid of that cut. I went out and saw that he had one of the cars marked wrong and had to mark the cars different and switch them for him. We had to use the two main lines. Lined up the Barnham stuff

on the outbound main and the Denver stuff on the inbound. It was impossible to get into the yard at the present time account another engine using the lead. When we got a chance to use it we took the cars into the yard. Devore took the ice house so that he could have the space for icers. And I did so, came to Burnham, got cab for Second 15's train, took it down to 11th St., also car of oranges for No. 92 on the Rock Island and I had to clear the main line for Second 15 and brought the cut to Burnham. Went back the inbound main to shove Second 1's train down with First 1's train and cut it off on the main line south of 11th St. and went back and against Second 1's train and we was getting in short time. Second 15 due out then. Towerman informed me that Second 15, or Dorsey, had notified him that Second 15 would be five or ten minutes late and he didn't know just when they would come out, as they were waiting for passengers. But he wanted to know how many cars I had in Second 1. I informed him seven. And he said that he thought that track No. 2 in the Union Depot would hold them as there were baggage cars in there and Rock Island No. 5. I started down to see if I could get hold of Dorsey so that we could shove Second 1 into track 2 into the depot; as I got to 15th Street, Second 15 started pulling out and as we had instructions to put Second 1 on track No. 9 at the Union Station. I went back to shove Second 1 into Track 9. The towerman said that he had got hold of Dorsey and to shove them in on Track 2, which we did. We had to couple into the baggage cars and then shove the baggage cars down a ways to hold Second 1's train. There was no chance for me to let Devore go alone, as if I had we could have delayed both Second 15 and Second 1. That is about all I can say on that. Devore was incapable of handling an engine and there wasn't anybody on the crew that could handle it. I begun to think that I would have to pull down and head into the yard with Second 1's train. If Second 15 hadn't got out when they did I would probably have had to do that.

Q. The question is, Mr. Saunders, what did you do about this car of Fords for the Ford Motor Company that arrived at 4:20 A. M.?

A. I didn't know anything about the handling of this car, as I couldn't leave this engine to go to the office to help Ellis.

Q. Are you familiar with the instructions on the handling of Ford business?

A. Yes, sir.

Q. What time were you supposed to deliver this to the C&S in order for them to get it out to the Ford plant?

A. 6 o'clock.

Q. Did you check First 66's consist on this date to see what business they had?

A. No, sir. I didn't get to see their consist at all. I saw the consist for Second 66 but I didn't see First 66's consist.

Q. Did you make a written report to the assistant trainmaster in regard to this Foreman Devore?

A. Yes, sir.

Q. Why did you feel like you had to do his work for him?

A. Somebody had to do it.

Q. Why didn't you call in another foreman for the engine?

A. I didn't know who to call. There was no helpers capable. We had the engine 1159 go to work up here and Mr. Ellis asked to have me and the foreman on the 1159 Burnham job to come to Denver and handle the river job.

Q. What is your understanding on the importance of handling Ford business?

A. It is very important to handle Ford business. It always has been.

Q. Is it the understanding that the handling of this business must be given preference?

A. It must be given preference but not when it comes to delaying a passenger train. If I had tied up down there and delayed Second 15, and No. 1 and 16, then they would have said something.

Q. How could this have happened?

A. By not getting an engine down there to handle it. As we had the main to clear, the ice house to pull, the cut on the main line forty cars, to switch. Had to come up here and get a caboose and oranges for 92 and deliver them. I didn't see where I could have done anything else.

Q. At what time did you go down to Denver Yard and talk to Asst. Yardmaster Ellis?

A. It was about 2:25 when I got down there and I guess it was about 2:35 when I went out in the yard.

Q. Prior to that time had you checked the consist of First 66 and Second 66?

A. I checked the Second 66 but not First 66. If the consist of First 66 was in there I did not see that. I

couldn't find it on the desk any place and I went out to see Mr. Ellis and he wanted me to help Devore so I never got back to the office.

Q. You made no effort before you even talked to Ellis to find out what was on First 66?

A. I looked for First 66's consist but I never got back.

Q. How many cars did Devore have in his pull from the UP?

A. About forty cars, and they was mixed up pretty bad. There was downtown stuff and Burnham stuff.

Q. You felt then that it was your responsibility then to do the switchman's work instead of handling your work as yardmaster in the yard?

A. It was a case of compulsory.

Q. Would you have been responsible for Mr. Devore doing his work wrong?

A. I would have been responsible if I had allowed a delay to Second 15, 1 and 16. If he had done his work wrong I would have been responsible. It is up to me to see that the work is done. Somebody has got to do it.

Q. Did you say anything to Mr. Ellis, or did Mr. Ellis say anything to you about First 66 having any business for Ford?

A. No, sir.

Q. You made no effort to find out whether First 66 had any business for Ford?

A. I had no chance to find out.

Q. The consist of this train was in here before 4:25 A. M.—that was the time you went down to Denver?

A. Yes, sir.

Q. Why weren't you able to find out then?

A. It was time for me to go to Denver.

Questions by Mr. Rice:

Q. Then you didn't check the consist of First 66?

A. No, sir. As far as I recall it wasn't checked unless Mr. Ellis checked it.

Q. Then you didn't know this Ford business was in town?

A. No, sir.

Questions by Mr. Fields:

Q. Who usually delivers those consists?

A. Messenger boys.

Q. Usually put them on your desk?

A. Yes. Usually sometimes you find them and sometimes you can't.

Q. You know what time First 66 got in?

A. No, I don't know the exact time when the First 66 came in but the last order we had on 66 was 4 o'clock.

Q. Do you help check the consists of all the trains?

A. As a rule, yes.

Q. You sure it wasn't on your desk there?

A. It could have been covered up. Helping Devore out why I just overlooked doing it, I guess. I never got back to the office to do it. A man shouldn't have to go out and help a foreman.

Questions by Mr. Albaugh:

Q. When business is good does it take most of your time keeping engines straightened out?

A. It does when you have inferior help.

Q. Was the yard pretty well filled up with cars?

A. Yes it was.

Further questions by Mr. Kemp:

Q. Mr. Saunders, at what time was this car delivered to the C&S?

A. As I understand it didn't get over there until after 7 o'clock.

Q. Do you know what time First 66 arrived at Burnham?

A. I understand it arrived at 4:20.

Q. Is there also a copy of this consist for the operator at Burnham to card the train from?

A. Yes, but they take the copy to Denver.

Q. Was there any misunderstanding on your part at all as to the preferred handling that must be given this business?

A. No, sir.

Q. Knowing the positive instructions out on the handling of this Ford business, why didn't you make sure whether First 66 did or did not have Ford business?

A. I didn't have a chance.

Q. Before you started doing all this extraneous work why didn't you find out?

A. I didn't have time to do it.

Q. You knew that certain things had to be given preferred attention?

A. Yes, sir.

Q. Part of your duties as night yardmaster was to supervise this work and see to it that it was given preferred attention, was is not?

A. Yes, sir.

Further questions by Mr. Rice:

Q. How long has Mr. Devore been working here?

A. About two or three years.

Q. Is this the first time he has been a foreman down there?

A. He was foreman a couple of weeks ago.

Q. Well, after your experience with him that night did you do anything about him?

A. I went right up to Mr. Crowley, clerk, and told him not to call him as foreman any more.

Q. You didn't report it to the General Yardmaster?

A. Yes, I told the General Yardmaster too.

Testimony of Mr. F. L. Ellis—Questions by Mr. Kemp:

Q. Your name?

A. F. L. Ellis.

Q. Age?

A. 37.

Q. Occupation?

A. Assistant yardmaster.

Q. Were you on duty in the Denver yard as assistant yardmaster on the morning of September 17th?

A. Yes, sir.

Q. What do you know about the delay in handling this car of automobiles that came in on First 66 on this date?

A. Well, I really didn't know the train had Fords. We have a new operator on at Burnham and the operator we formerly had I could get him on the arrival of the inbound trains and he would give me the number of cars and make me a list on the phone. He would say so many UPs and contents, so many Qs, etc. Then when I sent an engine after the train I knew exactly what the train had. But on this particular morning I didn't get a list. The operator has been having trouble carding the trains. So, as a rule when I call the operator for a line up on the train he can give me the contents but he can't give me the routing and I didn't know the train had Fords. I had a new crew on this engine that night handling 66 on this particular morning and I told him to deliver the UPs as he said he had 10

or 12 UPs and to switch the Q out of No. 2 and the C&S to 3. I then had to double the Q back on to the No. 3 and I was figuring on making a quick delivery on the south end of the yard on account of First and Second 1 on the inbound main, and the UP cut on the outbound. I knew that Tower A would be busy at that time of the morning with the UP passenger work and the D&RGW passenger work. In the meantime 91 arrived. I had 77 ordered for 6:30 A. M. So had first 78 switched, and the Rock Island blocks placed as near as possible for quick handling. After the arrival of second 78—had figure at 5:30 A. M. Utah Junction Second 78. Didn't want to block that Second 78 in the Union Depot as I knew his arrival time would be around 6:30 A. M. I had the 10:30 P. M. engine working at south end of the yard and making up 77 and 77 was made at 6:50 A. M. and by that time the engine from the east end of the yard came around to the south end and I had connecting lines on Tracks 2 and 3 for delivery to CB&Q and C&S. Looked like time would be too short to put a man out on the inbound ahead of No. 16 to crossover ahead of Second 15 due out of Union Station 6:59 A. M. on account specials usually 10 to 15 mins. late out of Union Station. At 7 A. M. I told the assistant yardmaster, Feehan, at Denver that I hadn't delivered the connecting lines out of 66 and figured on using a 7 A. M. Denver engine to make deliveries.

Q. What is your understanding of the instructions about the handling of this Ford business?

A. That they must be given preferred handling.

Q. Was it given preferred handling on this date?

A. I didn't know the train contained Fords.

Q. Did you ask the operator at Burnham whether the train had any Fords in it?

A. No.

Q. Could you have done this?

A. I probably could if had the time, but the yard was blocked and I had trains coming from both the south and west and they were sawing down, and I was trying to keep the yard open, especially for Second 78.

Q. Did you make any effort to look at the consist of First 66?

A. I went through the consists that were laying on the desk and found the consists of both 78s but don't recall looking at the consist of First 66.

Q. Did you make any effort to see if there were any

Fords on First 66 on that date? Especially, in view of the fact that you had to give this business preferred handling?

A. I looked over all the consists on the desk, looking for Fords or anything that they contained. I don't recall seeing First 66's consist.

Q. This business for Ford on which you had instructions to give preferred handling, usually comes into Denver on 66, or a section of 66, does it not?

A. Yes.

Q. The point I am trying to bring out is that you had instructions to give this business preferred attention. In order to give business preferred attention you must know whether that business is rolling into the terminal and if you don't know that business is rolling into the terminal you can't give such business preferred attention, is that correct, Mr. Ellis?

A. Yes sir. My method of a look at the consist is every time that I go into the office. I go through the consist and reports from the transfers and I usually go through the desks thoroughly at 11 P. M. and maybe I won't get back for at least 1½ or 2 hours. On this particular morning I had a new man on this lead engine. I had to get the icers for the house out of wagon tracks 14, 15, and 16, believe it was, and also get out fill and I was afraid that if a sent a new crew down there I couldn't get the house set up before 9:30 or 10 A. M.

Q. Was the work on this morning any different on this date from the past several mornings previous to that?

A. It wasn't any different but the yard was left a little different condition. My statement shows that I sent fifty Burnham loads out of Denver and I still had 26 Burnhams on the outbound main and 24 on No. 17 and was pulling transfers then. When I came to work at 11 P. M. 17 had Burnhams, about 15 cars, and Track 2 was full of a cut to switch from connecting lines and 3 had 8 or ten cars to switch from connecting lines, and No. 8 had a C&S cut to switch.

Q. The fact remains, however, Mr. Ellis, that this business of Ford's under which everyone has been lined up to give preferred attention was given no attention at all, is that correct?

A. No, not hardly. It wasn't given preferred attention on this morning, but it was given the attention that 66's connecting lines usually get.

Q. Mr. Saunders stated that he didn't know there were any Fords on this train and you stated you didn't know there were any Fords on this train, why couldn't it have been given preferred attention?

A. Well, we give 66 quick deliveries whether we know there are any Fords or not, that is, as quick as possible. The CB&Q had cars in there on 66 that were almost as hot as the Fords, I think perishable and so did the UP.

Questions by Mr. Rice:

Q. How are the consists handled on the arrival of trains at Denver?

A. The operator takes them at Burnham and then the question is how to get the consist to Denver. If there is anyone coming to Denver, like the yardmaster or anybody, they usually bring them to Denver yard. If not, the freight house sends a messenger after them.

Q. What system have you of checking a consist?

A. They are usually placed on the yardmaster's desks and the yardmaster can check them then.

Q. Are they always checked for these important movements?

A. Yes, sir.

Q. Well, then, how do you account for not being able to check 66 this morning?

A. As a rule on 66's arrival I generally call Burnham yard and ask him how many cars in the train. Then when the conductor brings the bills and gives them to the yard office, I call back again and he reads the list and I in turn take it over the telephone at Denver.

Q. Was this done that night?

A. No.

Q. Then you depend on getting the consist down to Denver later and getting the information?

A. Well, I missed the consist. I had 91 in town and I was arranging the tonnage for 77 and had him made at 6:50 A. M.

Q. Then this car was thrown into the C&S cut and taken over immediately?

A. Yes, sir.

Questions by Mr. Albaugh:

Q. Is there anybody in the office that could check those consists besides you?

A. Well, on inbound stuff, the consist from the west,

the freight house checks them and they figure the tonnage on the Rock Island trains and card the Rock Island.

Q. Was there anybody that checks the trains from the south?

A. Yes, there is a clerk that checks the trains from the south and notifies connections.

Q. Doesn't he know the value when he has important cars in the train to be handled?

A. Sometimes he does and sometimes he doesn't.

Q. Doesn't he have to tell you?

A. I don't know whether he has to or not. When we have important loads off the wagon track why he will come out in the yard and deliver the order to you.

Q. Did anyone deliver to you First 66's consist?

A. No sir. If it came to Denver yard it came with the other consists and switch orders.

Q. Does it keep you pretty busy out in the yard when you have lots of trains to handle?

A. Yes.

Q. Do you have a chance to get over to the office to check your consist and important orders often?

A. You just have to settle down when you have new men working in the Denver yard. On this night I had two new crews. The 77 was pretty important to get out on time. I would have given the Fords preference in handling if I had known the train contained Fords.

Q. Were both the main lines blocked?

A. Yes sir.

Q. Was it necessary for you to clear them?

A. Yes sir.

Questions by Mr. Fields:

Q. At different times during the night you check the consists?

A. Yes.

Q. When night yardmaster is at 4th Avenue or elsewhere, then, you make a particular effort to check the consists, do you?

A. Yes. I make a particular effort whether he is at 4th Avenue or Denver.

Q. Is it the duty of both of you to check the consists?

A. Yes, sir.

Q. So, I suppose when you know that he is not there, why you make a particular effort to check them more than you would if you knew he was right in the office?

A. Yes, sir.
Q. And you try to cooperate on that, do you?
A. As much as possible.

Findings: The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record does not justify the action of the carrier in assessing discipline in this case.

Award

Claim sustained.

National Railroad Adjustment Board
By Order of First Division
Attest: (Sgd) T. S. McFarland,
Secretary.

Dated at Chicago, Illinois, this 31st day of March, 1938.

Endorsed: In the District Court of the United States. * * (Caption—3788) * * Petition for Declaratory Judgment. Filed Jan. 12, 1942, Hoyt King, Clerk.

38 And afterwards on, to wit, the 2nd day of February, 1942, came the Defendants, F. J. Williams, et al. by their attorneys and filed in the Clerk's office of said Court their certain Answer, in words and figures following, to wit:

39 In the District Court of the United States.
* * (Caption—3788) * *

ANSWER OF F. J. WILLIAMS, WILLIAM BISHOP, PAUL M. CARTER, R. E. EDRINGTON AND FRED LEWIS, DEFENDANTS.

Now come the defendants, F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis, by Leo J. Hassenauer, their attorney, and for answer to the complaint of The Order of Railway Conductors of

America and the Brotherhood of Railroad Trainmen, heretofore filed in this cause, allege:

1. These defendants admit the allegations contained in paragraphs 1, 2, 3, 4 and 5 of said Complaint.

2. These defendants admit the allegations contained in paragraph 6, and allege further that three members of the Fourth Division of the National Railroad Adjustment Board are selected by labor organizations of the employees, national in scope, which have been organized in accordance with the provisions of Section 2 of the Railway Labor Act, as amended.

3. These defendants further allege that said three members of the said Fourth Division of the National Railroad Adjustment Board were selected by employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and which said three members of the Fourth Division are executive officers of the International Longshoremens' Association, the Inland Boatmens' Union of the Pacific and the National Marine Engineers' Beneficial Association, voluntary unincorporated associations.

3. Defendants admit the allegations contained in paragraph 7 of the Complaint.

These defendants allege further that the decree entered by the District Court of the United States, for the Northern District of Illinois, Eastern Division, in Chancery No. 16031, wherein the Fourth Division of the National Railroad Adjustment Board was directed and commanded to take jurisdiction of three individual disputes of Yardmasters and to render awards thereon was entered without the knowledge of these defendants.

These defendants further allege that the three members of the said Fourth Division of the National Railroad Adjustment Board selected by the labor organizations of the employees, national in scope, filed no appearance, answer or objection to the aforesaid proceedings and that said proceedings were conducted and heard upon the sworn complaint and upon the answer filed by the three members of the Fourth Division of the National Railroad Adjustment Board selected by the carriers and which answer, as from the record in this Court will more fully appear, admitted the allegations contained in said complaint.

These defendants further allege that since the entry of the aforesaid decree, hearings have been held on the First

Division of the National Railroad Adjustment Board in accordance with the jurisdiction conferred on said Board by the Railway Labor Act, as amended; that jurisdiction was taken of disputes involving Yardmasters as coming within the jurisdictional provisions of Section 3(h) of the Railway Labor Act, as amended; that hearings on said Yardmasters' disputes were held without objection by the members of the said First Division or of the respondent carriers, and that awards were rendered thereon.

41 These defendants further allege that the administrative interpretation of the jurisdictional provisions of the First Division, under Section 3(h) of the Railway Labor Act, as amended, by all of the defendants herein, either separately or together with a referee selected and appointed by the National Mediation Board, was an administrative determination, interpretation and finding within the spirit of the Railway Labor Act, and that said interpretation should be recognized and given credit by this Court.

Further answering Paragraph 7 of the complaint these defendants allege that no power exists in the members of the First Division of the National Railroad Adjustment Board to issue or cause to be issued the statement marked Exhibit "C" of the complaint to these defendants, in which Exhibit it was proposed that the Fourth Division of the National Railroad Adjustment Board hear, determine and enter awards on certain disputes referred to in said Exhibit.

4. These defendants admit the allegations contained in Paragraph 8 of said Complaint.

5. These defendants admit the allegations contained in Paragraph 9 of said Complaint.

6. These defendants admit the allegations contained in Paragraph 10 of the Complaint.

7. These defendants admit the allegations contained in Paragraph 11 of the Complaint and allege further that as members of the First Division of the National Railroad Adjustment Board they were unanimously in favor of holding hearings in and rendering awards on the disputes mentioned in Exhibit "C".

These defendants further allege that as representatives of the standard railroad labor organizations, the members of which are engaged in train and yard service, they are qualified and informed by experience to hear and decide disputes involving Yardmasters.

These defendants further allege that the First Division of the National Railroad Adjustment Board, as constituted under Section 3(h) of the Railway Labor Act, is in
42 session at all times and that said First Division, because of the jurisdiction conferred thereon by said Railway Labor Act to have jurisdiction over disputes involving train and yard service employees of carriers are better equipped and qualified, because of their experience, to hear disputes involving Yardmasters and to render awards thereon.

These defendants further allege:

That in a certain bill to amend the Railway Labor Act with respect to the National Railroad Adjustment Board, Bill #S.4375, it was proposed by the American Short Line Railroad Association that Section 3(h) of the Railway Labor Act, as amended, be further amended in the following particulars:

"(9) (a) The First Division of the Adjustment Board shall have jurisdiction over disputes involving train and yard-service employees of carriers including engineers, firemen, hostlers, outside hostlers, helpers, conductors, trainmen, and yard-service employees, except yardmasters and other subordinate officers."

(a) The above proposed amendment to the Railway Labor Act to except yardmasters from the jurisdictional provision of Section 3(h) of the Railway Labor Act, more particularly to restrict the jurisdiction of the First Division of the National Railroad Adjustment Board, is persuasive that by the proposed amendment it is sought to limit the jurisdiction of the said First Division as at present provided for.

(b) That the issuance of awards heretofore rendered involving yardmasters' disputes by said First Division without any objection to the jurisdiction of said First Division to hear, consider and render awards in disputes involving yardmasters constitutes an administrative interpretation of the jurisdictional provisions of the Railway Labor Act governing the jurisdiction conferred on said First Division and that said administrative interpretation should not be interfered with by this Court but that this Court should grant the relief prayed for in the complaint and to render a declaratory judgment that all disputes involving yardmasters as yard-service employees shall be heard and determined by said First Division and that a de-

eree be entered herein in accordance with the prayer for relief as contained in said complaint ordering the said First Division to hear and determine all disputes involving yardmasters as yard-service employees, including
43 those disputes set forth in Exhibit "C" attached to the complaint, together with all other disputes presented to said First Division of the National Railroad Adjustment Board since the issuance of said Exhibit and all such unadjusted disputes which may arise on the property of any carrier subject to the provisions of the Railway Labor Act.

(c) These defendants further pray for relief and a declaratory judgment and that the Court adjudge:

1. That the decree heretofore entered in chancery #16031 be declared to be final and binding only with respect to the three disputes set forth in that complaint.

2. That said complaint did not constitute a class suit as would be final and binding upon any of the standard railroad labor organizations representing yardmasters in proceedings before the First Division of the National Railroad Adjustment Board.

3. That the First Division of the National Railroad Adjustment Board has jurisdiction over disputes involving yardmasters.

That these defendants recover their costs.

Leo J. Hassenauer,
Attorney for F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis, Defendants.
Address: 105 W. Adams Street
Chicago, Illinois.

Endorsed: In the District Court of the United States • • • (Caption—3788) • • • Answer of F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis, Defendants. Filed Feb—2 1942 at 3:15 o'clock PM Hoyt King, Clerk. $5.00 H. M. W. Leo J. Hassenauer, Attorney for Certain Defendants, 105 W. Adams Street, Chicago. Central 8177.

44 And afterwards on, to wit, the 9th day of February, 1942, came the Defendants E. W. Fowler, et al by their attorneys and filed in the Clerk's office of said Court their certain Answer, in words and figures following, to wit:

45 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—3788) * *

ANSWER OF DEFENDANTS E. W. FOWLER, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD, AND L. O. MURDOCK

The joint and several answer of defendants E. W. Fowler, T. K. Faherty, R. A. Knoff, L. L. McDonald and L. O. Murdock to the complaint of the plaintiffs above named, respectfully shows:

I.

These answering defendants allege that they have no information or belief sufficient to enable them to answer the allegations contained in that part of paragraph 1 of the complaint, commencing with the words "The plaintiffs," in line 16 on page 2 of said complaint, and ending with the words "or not," in line 21 on said page 2, and therefore deny each and all such allegations.

These defendants admit the allegations set forth in the remainder of said paragraph 1.

II.

Answering paragraph 2 of the complaint, these defendants, E. W. Fowler, T. K. Faherty, R. A. Knoff, L. L. McDonald and L. O. Murdock, show that they are duly
46 selected, compensated and continued in office as the Carrier Members of the First Division of the National Railroad Adjustment Board, pursuant to the provisions of Section 3, First (b) of the Railway Labor Act. For the sake of convenience, they are designated in this answer as the "Carrier Members."

Defendants F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis, who are members and national officers of the Order of Railway Conductors of America, Brotherhood of Locomotive Engineers,

and the Brotherhood of Locomotive Firemen and Enginemen, respectively, are duly selected, compensated and continued in office as the Labor Members of said First Division of the National Railroad Adjustment Board. For the sake of convenience, said defendants last-mentioned are designated in this answer as the "Labor Members."

The Carrier Members admit all of the allegations of said paragraph 2, except as above qualified, and except also that they deny that they or the Labor Members of said First Division are "permanent" members thereof, in this respect alleging that the Railway Labor Act makes no provisions for "permanent" tenure of office by the members of said Board.

III.

Answering paragraph 3 of the complaint, the Carrier Members admit that this is a suit of a civil nature for a declaratory judgment, brought pursuant to the Federal Declaratory Judgments Act of 1934 (28 U. S. Code 400), and arising under the Railway Labor Act, as amended (45 U. S. Code 151-163); in that there is involved in this suit the construction and interpretation of certain provisions of said Railway Labor Act; these defendants therefore admit that this Court has jurisdiction of this action, and of the parties thereto.

47 IV.

The Carrier Members, answering the allegations of paragraph 4 of the complaint, admit the filing of a so-called ex parte submission by the Order of Railway Conductors of America against the Great Northern Railway Company with the First Division of the National Railroad Adjustment Board, and admit that the Great Northern Railway Company in said Docket No. 6404 protested the hearing or rendition of any award in said dispute, on the ground that jurisdiction over the said dispute is not vested in the First Division. The Carrier Members deny that V. E. Benjamin and M. L. Nagle, yardmasters, are "otherwise known as yard-service employees," and aver to the contrary that when acting as yardmasters they are subordinate officials exercising managerial functions. The Carrier Members admit that Exhibit "A" annexed to the complaint is a copy of the ex parte submission filed on behalf of said yardmasters but deny that the statements therein

are true and correct, except as otherwise herein admitted; and they attach hereto, marked pages 1 to 18 of the Appendix to this answer, true and correct copies of two documents filed by the Great Northern Railway Company in answer to said ex parte submission, and by this reference said documents are made a part of this answer. The Carrier Members deny all other allegations of paragraph 4 of the complaint.

V.

Answering paragraph 5 of the complaint, the Carrier Members deny that Assistant Yardmaster W. W. May is "otherwise known as a yard-service employee." They admit that on January 4, 1941, the Brotherhood of Railroad Trainmen on behalf of W. W. May purported to present and file in said Docket No. 12295 an ex parte submission with said First Division against the Southern Pacific Company (Pacific Lines), and that Exhibit "B" an-
48 nexed to the complaint is a copy thereof, but deny that the statements therein contained are correct, except as otherwise herein admitted. Said Carrier Members also admit that on the 24th day of March, 1941, the Southern Pacific Company (Pacific Lines) filed its simultaneous answer to said ex parte submission wherein it protested the acceptance, hearing of or rendition of any award in said dispute by the First Division, on the ground that jurisdiction over disputes between carriers and yardmasters is vested in the Fourth Division.

The Carrier Members deny each and every other allegation of paragraph 5 of the complaint not herein specifically admitted.

Attached hereto, and marked pages 19 to 32 of the Appendix to this answer, and by reference made a part hereof, is a true and correct copy of the said ex parte submission filed by said Southern Pacific Company in said Docket No. 12295.

VI.

These defendants, answering the allegations of paragraph 6 of the complaint, show that the Fourth Division of the said National Railroad Adjustment Board, created under Section 3, First (h) of the said Railway Labor Act, is composed of six members, three of whom are selected by the carriers and the other three by national labor organizations of the employees. The labor organizations and

the members selected by them holding office from time to time on the Fourth Division have been and are as follows:

The National Marine Engineers' Beneficial Association selected Charles M. Shephar, who was succeeded March 25, 1935, by William S. Brown, who in turn was succeeded April 2, 1937, by S. J. Hogan, who on March 31, 1941,
49 was succeeded by the present incumbent, J. H. Blake; and the International Longshoremen's Association selected J. J. Noonan, who on March 14, 1936, was succeeded by R. A. Walton; and the Inlandboatmen's Union of the Pacific selected C. W. Deal, who on March 31, 1941, was succeeded by J. M. Fox.

The Carrier Members of the First Division, defendants, further admit that the Fourth Division has the jurisdiction specified in Section 3, First (h) of the Railway Labor Act. All other allegations of said paragraph 6, not otherwise expressly admitted, are denied by the Carrier Members.

VII.

The Carrier Members, answering the allegations of paragraph 7 of the complaint, admit that on August 28, 1941, they wrote to the Labor Members the letter which is made Exhibit "C" to the complaint, in which they advised the Labor Members that they would not participate in any consideration of the merits in nine specified dockets, among which were Dockets Nos. 6404, and 12295. The other Dockets, Nos. 12101, 12277, 12278, 12280, 12294, 10665, and 11801 are likewise still pending, the Carrier Members having refused to consider the claims there contained upon the merits, holding the view that the First Division lacks jurisdiction. Since that date the Carrier Members have determined, and advised the Labor Members in a letter identical with Exhibit "C" of the complaint, that the First Division does not have lawful jurisdiction in the following additional claims and disputes:

Docket No. 10109—Conductors *vs.* Louisville & Nashville R. R.

Docket No. 6837—Trainmen *vs.* Chicago and North Western Ry.

Docket No. 6406—Conductors *vs.* Chicago and North Western Ry.

Docket No. 13318—Conductors *vs.* Monongahela Ry.

Docket No. 4535—Trainmen *vs.* International Great Northern Ry.

Docket No. 4536—Trainmen *vs.* International Great Northern Ry.

Docket No. 6644—Trainmen *vs.* Florida East Coast Ry.

Docket No. 8970—Trainmen *vs.* The Central R. R. Co. of N. J.

Attached hereto, as a part hereof, is a true and correct copy of the submissions of the respective carriers and
50 petitioning labor organizations involved in all of the above dockets. The statements in the respective submissions of the petitioning labor organizations are denied except as otherwise admitted in the submissions of the respective carriers. The aforesaid submissions appear in the Appendix hereto as the following pages:

Docket No. 10109—Conductors *vs.* L. & N. R. R., Appendix pp. 33 to 44.

Docket No. 6837—Trainmen *vs.* C. & N. W. Rwy., Appendix pp. 45 to 50.

Docket No. 6406—Conductors *vs.* C. & N. W. Rwy., Appendix pp. 51 to 69.

Docket No. 13318—Conductors *vs.* Monongahela Rwy., Appendix pp. 70 to 92.

Docket No. 4535—Trainmen *vs.* Intl. Gr. Nor. Rwy.; Appendix pp. 93 to 103.

Docket No. 4536—Trainmen *vs.* Intl. Gr. Nor. Rwy., Appendix pp. 104 to 120.

Docket No. 6644—Trainmen *vs.* Fla. East Coast Rwy., Appendix pp. 121 to 152.

Docket No. 8970—Trainmen *vs.* Cen. R. R. Co. of N. J., Appendix pp. 153 to 171.

Docket No. 12101—Trainmen *vs.* Sou. Pac. Co. (Pac. Lines), Appendix pp. 172 to 222.

Docket No. 12277—Trainmen *vs.* Sou. Pac. Co. (Pac. Lines), Appendix pp. 223 to 240.

Docket No. 12278—Trainmen *vs.* Sou. Pac. Co. (Pac. Lines), Appendix pp. 241 to 263.

Docket No. 12280—Trainmen *vs.* Sou. Pac. Co. (Pac. Lines), Appendix pp. 264 to 283.

Docket No. 12294—Trainmen *vs.* Sou. Pac. Co. (Pac. Lines), Appendix pp. 284 to 298.

Docket No. 10665—Trainmen *vs.* Sou. Pac. Lines (T&L), Appendix pp. 299 to 385.

Docket No. 11801—Trainmen *vs.* M. St. P. & S. S. M. Rwy. Co., Appendix pp. 386 to 408.

The Carrier Members deny each and all of the allegations of the second and third paragraphs of paragraph 7 of the complaint, in which the plaintiffs set out their legal conclusions respecting the decree entered by this Court in Chancery No. 16031.

VIII.

Answering paragraph 8 of said complaint, the Carrier Members admit that, substantially as alleged in said paragraph, said First Division undertook to exercise jurisdiction over and to render awards upon the disputes referred to in said paragraph, and that the several exhibits "D," "E," "F" and "G" annexed to said complaint are copies of said awards; but the Carrier Members further allege that no question as to the juirsdiction of said First Division to consider, or hear, or determine said disputes was raised by any of the respective carriers respondent in said proceedings. The Carrier Members also allege and show that, as members of the First Division, they have without objection joined the Labor Members thereof in accepting jurisdiction over certain claims of persons classed at
51 times as yardmen and at other times as yardmasters, for compensation which said claimants might or should have earned pursuant to certain promotion rules appearing in Yardmen's Agreements; but allege further that no such issue is involved in either or any of the disputes specifically mentioned and referred to in paragraphs 4 and 5 of the complaint, or in any of the disputes now pending before the said First Division and which are referred to by docket number in paragraph VII of this answer. The Carrier Members also aver and show that they have likewise jointed with the Labor Members in accepting jurisdiction over numerous other disputes involving claims derived from and based upon provisions in the schedule agreements made by the representative of and concerning the yardmen (such as cases where a yardmaster has been performing yardmen's work); that there is attached hereto, and by reference made a part hereof, as page 409 of the Appendix to this answer, a statement showing by number each of some 15 awards, rendered in disputes of

the character last described; that said 15 cases are typical and representative of a large number of substantially similar cases, all of which differ, as to the essential points in issue, from the cases listed and referred to by docket number in paragraph VII of this answer. In a number of other cases jurisdiction has been entertained by the First Division with whom a referee participated. Typical of these cases, which were handled upon the merits over the objection of the Carrier Members, is that covered by Award No. 1896, being a dispute between the Switchmen's Union of North America and the Chicago, Rock Island & Pacific Railway Co., in which a referee, Mr. Frank P. Douglass, participated with the Labor Members and in which the Carrier Members dissented.

IX.

Answering paragraph 9, the Carrier Members deny the allegations of said paragraph, except they admit that the duties of yardmasters include directing the work of the classes mentioned in sentence one, paragraph 9, al-
52 though such direction is not exercised solely by yardmasters. In this behalf the Carrier Members allege and show that in the performance of their duties railroad yardmasters have charge of yards and are responsible for conditions within such yards; that trains and engines, and all employees in train, engine, or yard-service within yards are subject to their direction and control; that they are required to see that employees within yards are in condition for the proper discharge of their duties; that they are responsible for the proper make-up, break-up, and movement of trains through yards, the prompt and proper handling of cars, and fulfillment of all requirements as to the movement, switching and protection of cars and of the freight contained therein. In the discharge of these, their said duties, yardmasters necessarily exercise a substantial measure of individual initiative and responsibility. They form and, in general railroad practice, have been recognized as forming, a distinct class of supervisory employees; and because of their responsibilities and character of supervision and direction which they are required to and do exercise, all as above described, they have been classed and are generally referred to and designated as "subordinate officials," and are not and never have been classed or described or regarded as "yard-service employees" within the estab-

lished meaning of that term as understood and employed in the railroad industry, or as the same appears in Section 3, First (h) of the Railway Labor Act. Yardmasters are not "yard-service employees" within the meaning and intent of paragraph (h) of Section 3 of the Railway Labor Act. Yardmasters are invested with authority over the following classes of employees working in yards, in their whole or part time:

(1) Yard Locomotive Engineers.
(2) Yard Locomotive Firemen.
(3) Yard Engine Firemen
(4) Yard Helpers and Switchtenders.
(5) Yard Clerical Forces.
(6) Telephone and Telegraph Employees in Yard Offices.
(7) Towermen operating interlocking switches.
(8) Yard Section Foremen and Laborers
(9) Signal Department Forces while engaged in maintenance of yard signal plants.
(10) Car Inspectors and Repairers.

53 The classes numbered (1), (2), (3), and (4) are known as "yard-service employees"; but though engaged in yard work, the classes numbered (5), (6), (7), (8), (9), and (10) are not "yard-service employees", despite being supervised by yardmasters when performing work in yards, as some may be engaged during their whole time.

The classes numbered (5), (6), (7), (8) and (9) in the specification just given are subject to the jurisdiction of the Third Division, pursuant to Section 3, First (h) of the Railway Labor Act, and the class numbered (10)—Car Inspectors and Repairers—is subject to the jurisdiction of the Second Division.

X.

Answering paragraph 10 of said complaint, the Carrier Members admit that, substantially as alleged in said paragraph 10, no further remedy or relief can be obtained from the defendants, the ten members of the First Division of the National Railroad Adjustment Board, toward the hearing and determination by said First Division of disputes involving yardmasters and arising out of the service of yardmasters as employees of carriers performing supervisory duties; but the Carrier Members deny each and every other allegation of said paragraph 10, and deny in particular that said plaintiffs have pursued, undertaken,

or exhausted any remedy or remedies available to them, under the Railway Labor Act or otherwise, for the purpose of obtaining the hearing and determination of disputes involving yardmasters, as aforesaid, by the Fourth Division of said Board. In this behalf the Carrier Members allege and show that exclusive jurisdiction to hear and determine such disputes is by law vested and resides in said Fourth Division.

Further answering said paragraph 10, the Carrier Members deny that they are without interest in regard to the relief prayed for herein, showing that in such event no controversy would be presented upon which this Court could enter a declaratory judgment; and to the contrary,
54 the Carrier Members allege that they have the duty and responsibility, particularly owed to the railroads subject to Part I of the Interstate Commerce Act which they represent and in the public interest, to confine the jurisdiction of the First Division to those disputes which may legally and validly be brought before it within the jurisdiction stated in the Railway Labor Act. In this connection the Carrier Members further allege that it would be contrary not only to law, but also to the interest of the railroads subject to the Interstate Commerce Act and to the public interest for this Court to declare that the First Division has exclusive jurisdiction "of disputes involving yardmasters as yard-service employees", since to do so would deprive all of those yardmasters not represented by either the Order of Railway Conductors or the Brotherhood of Railroad Trainmen of all opportunity to try their claims and disputes before an adjustment board duly constituted in accordance with law, and to the contrary, would leave such yardmasters subject to awards by the First Division of the Adjustment Board composed, to the extent of 70 per cent, of persons opposed in interest to the success of their claims against the employing carriers. Upon numerous railroads, yardmasters as a craft or class are represented by a standard railroad labor organization known as the Railroad Yardmasters of America, which organization undertakes also to handle the claims of individual yardmasters with the Fourth Division. If any such claims are or may hereafter be compelled to be presented to the First Division, the five Carrier Members will naturally be adverse to sustaining any claim to which the employing railroad offers a valid defense; the representative of the Order of Railway Conductors and the representative

of the Brotherhood of Railroad Trainmen, as members, officers and representatives of labor organizations, which are energetic rivals of the other organizations largely representing yardmasters, are not disposed, and as a matter of rival organization policy and custom, will refrain from adding to the prestige and influence of any of said yard-
55 masters' organizations by bringing yardmaster claims to a successful conclusion before the First Division.

XI.

Answering paragraph 11, the Carrier Members deny each and every allegation of said paragraph; and in this behalf the Carrier Members allege and show that the plaintiffs and each of them, to the extent that they, or either, or any of them, represent, either singly or collectively, any persons employed by carriers as yardmasters, are fully able to obtain a fair, adequate and lawful hearing and determination of each and every dispute and claim arising out of the employment of or involving any such yardmaster, which is or may be subject to handling under the provisions of the Railway Labor Act and particularly Section 3 thereof, by presenting and submitting such claim or claims to the Fourth Division, National Railroad Adjustment Board; which said Division, as heretofore alleged, has full and exclusive jurisdiction over such disputes.

Further Answer and Counter-claim.

As a further defense to said complaint and to the alleged cause or causes of action therein, and in support of their counter-claim for the affirmative relief hereinafter demanded, these answering defendants, the said Carrier Members, further allege and show:

XII.

These defendants repeat each and all of the averments, admissions and denials set forth in the foregoing paragraphs Nos. I to XI, inclusive, of this answer.

XIII.

The Fourth Division of the National Railroad Adjustment Board has heretofore duly and regularly exercised
56 its jurisdiction, in accordance with law, and the decree

and mandate of this Court heretofore rendered in this cause identified as Chancery No. 16031, in numerous cases before said Fourth Division, including claims and disputes of yardmasters, and in the exercise of such jurisdiction has duly and regularly received and docketed the submissions of the parties therein, held hearings, and made findings, and rendered awards. Each and all of the members of said Fourth Division have participated in the proceedings in which said awards were rendered. The following is a partial list of the numbers of the awards so rendered by said Fourth Division:

Award No.	Award No.	Award No.	Award No.
16	27	70	94
17	28	71	95
18	53	72	96
22	54	73	97
25	67	74	98
26	69	75	99
			105

Attached hereto, at the indicated pages of the Appendix to this answer, are full, true and correct printed copies of the following awards of said Fourth Division:

Award No. 28—Railroad Yardmasters of North America *vs.* The Detroit Terminal R. R. Co., pp. 410 to 413.

Award No. 54—Railroad Yardmasters of America *vs.* The Pittsburgh & Lake Erie Railroad Co., pp. 414 to 423.

Award No. 67—Railroad Yardmasters of America *vs.* Louisville & Nashville R. R. Co., pp. 424 to 431.

Award No. 86—The American Railway Supervisors' Association, Inc. *vs.* Chicago and North Western Rwy., pp. 432 to 447.

These answering defendants, the Carrier Members, by this reference, adopt the statements in the carriers' respective submissions set forth in the above awards. Said awards are typical and representative of the awards which have been rendered by said Fourth Division within its sole jurisdiction of yardmaster cases and for that reason are attached to this answer.

Wherefore, these answering defendants, the Carrier
57 Members aforesaid, pray that this Court do adjudge and decree:

(1) That yardmasters, by reason of the character of their duties and the responsibilities imposed upon them, for many years past have been and now are generally

known in the railroad industry as "subordinate officials", and have been and are properly described and classified as such;

(2) That yardmasters have never been regarded, designated, or classified within the railroad industry as "yard-service employees", and have not been and are not "yard-service employees", within the meaning and intent of paragraph (h) of Section 3 of the Railway Labor Act;

(3) That the First Division of the National Railroad Adjustment Board therefore has no jurisdiction to hear, consider or determine disputes involving yardmasters, or arising out of their duties, conditions, and circumstances of employment;

(4) That exclusive jurisdiction of such disputes involving yardmasters is vested in the Fourth Division of the National Railroad Adjustment Board;

(5) That the decree heretofore made and entered by this Court in Chancery No. 16031 is valid and binding; and must and should be so regarded by said First Division, and by each and all of the members thereof;

(6) For such other and further relief as may be proper in the premises.

Sydney R. Prince, Jr.,
1728 Consumers Building,
Chicago, Illinois,
Attorney for defendants E. W. Fowler, R. A. Knoff, L. O. Murdock, L. L. McDonald and T. K. Faherty.

Sidney C. Murray,
Chicago, Illinois.
Of Counsel.

This certifies that I have this 9th day of February,
58 1942, served a copy of this answer upon Everett L. Gordon, Attorney for the Plaintiffs, and Leo J. Hassenauer, Attorney for Defendants F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis; and likewise upon Messrs. Poppenhusen, Johnston, Thompson & Raymond, appearing for the Railroad Yardmasters of America seeking to intervene herein, by leaving copy thereof at their respective offices.

Sydney R. Prince, Jr.,
Attorney for Defendants E. W. Fowler, R. A. Knoff, T. K. Flaherty, L. O. Murdock and L. L. McDonald.

60a And on the same day, to wit, the 10th day of October, 1944, there were filed in the Clerk's office of said Court certain Labor Members' Exhibits A and B, in words and figures following, to wit:

61 LABOR MEMBERS' EXHIBIT "A".

(Filed Oct. 10, 1944, Roy H. Johnson, Clerk.)

Rules and Rates of Pay of Yardmen
Brotherhood Railroad Trainmen.
Chicago Switching District

The Chicago Memorandum of Agreement.

62 Memorandum of Agreement between Brotherhood of Railroad Trainmen and General Managers' Committee representing the following named railroads:

Atchison, Topeka & Santa Fe Railroad.
Baltimore & Ohio Railroad.
Chesapeake & Ohio Railroad of Indiana.
Chicago & Alton Railroad.
Chicago & Western Indiana Railroad.
Chicago & Northwestern Railroad.
Chicago, Burlington & Quincy Railroad.
Chicago Junction Railroad.
Chicago, Milwaukee & St. Paul Railroad.
Chicago, Indianapolis & Louisville Railroad.
Chicago & Erie Railroad.
Indiana Harbor Belt Railroad.
Illinois Central Railroad.
New York Central Railroad.
New York, Chicago & St. Louis Railroad.
Pittsburgh, Cincinnati, Chicago & St. Louis Railroad.
Pittsburgh, Fort Wayne & Chicago Railroad.
The Belt Railroad of Chicago.
Wabash Railroad.

The following Rates of Pay, Rules and Regulations will apply to yardmen and switchtenders in the Chicago Switching District, and shall be transmitted to the railroads represented, to be incorporated in their individual schedules:

63 Article X.

Yardmen.

(b) The right to preference of work and of promotion will be governed by seniority in service. The yardmen oldest in service will be given the preference, if competent.

(c) In the appointment of Yardmasters and Assistant Yardmasters the senior yardmen will, in all cases, be given full and unprejudiced consideration.

* * * * * *

Article XXVI.

Life of This Agreement.

The Rules and Rates of Pay herein agreed upon shall remain in effect until revised or abrogated, of which intention thirty days' notice shall be given by the party desiring the change.

Rates of pay effective January 1, 1919 (as revised by arbitration agreements, Eastern and Western Territory, effective December 1st, 1926, and March 1st, 1927, respectively).

Changes in rules due to Supplement 16 to General Order No. 27 effective April 10, 1919.

All other rules effective January 2, 1920.

Signed at Chicago, Illinois, December 20, 1919.

For the Railroads:

Signed

A. P. Titus, *Chairman*
E. L. Johnson
W. S. Cooper
W. E. Schaff
W. H. Scriven
W. J. O'Brien
G. B. Vilas
J. J. Pelley
G. J. Schreeve

For the B. R. T.:

Signed

A. F. Whitney,
Vice President, B. R. T.
H. R. Sauer,
Chairman, Chicago Association, B. R. T.
H. P. Gallagher,
Vice Chairman, Chicago Association, B. R. T.
W. W. McKirchy,
Secretary, Chicago Association, B. R. T.

64 LABOR MEMBERS' EXHIBIT "B".

(Filed Oct. 10, 1944, Roy H. Johnson, Clerk.)

Chicago North Western Line.
Chicago and North Western Railway Company.

Agreement

Between

Chicago and North Western Railway Company

and

Brotherhood of Railroad Trainmen

Effective August 21, 1935.

Rule 12. (b) The right to preference of work and promotion will be governed by seniority in service. The yardmen oldest in service will be given the preference, if competent.

(c) In the appointment of yardmasters and assistant yardmasters the senior yardmen will, in all cases, be given full and unprejudiced consideration. Yardmen appointed to position of yardmaster or assistant yardmaster in their seniority district will not forfeit seniority as yardmen while so assigned.

For the Employees:

E. O. Dugan,
Chairman, General Committee—Brotherhood of Railroad Trainmen.

O. G. Jones,
Secretary, General Committee—Brotherhood of Railroad Trainmen.

For the Railway Company:

M. E. Pangle,
Asst. to President.

67 And on the same day, to wit, on the 9th day of February, 1942, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

68 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—3788) * *

ORDER.

This cause coming on to be heard on the petition and motion of Railroad Yardmasters of America for leave to intervene as a party defendant, and the Court having heard the arguments of counsel and being fully advised in the premises, Finds that due notice of the presentation of said petition and motion together with service of the answer and counterclaim of said petitioner having been given and served upon all parties in interest;

It is Ordered that leave be, and it hereby is given the Railroad Yardmasters of America to intervene as a party defendant and to file instanter herein its answer and counterclaim.

Enter:

Charles E. Woodward
Judge.

Dated, February 9, 1942.

69 And on the same day, to wit, the 9th day of February, 1942, came the Railroad Yardmasters of America by its attorneys and filed in the Clerk's office of said Court its certain Answer and Counterclaim, in words and figures following, to wit:

70 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—3788) * *

ANSWER AND COUNTERCLAIM OF THE RAILROAD YARDMASTERS OF AMERICA.

For answer to the complaint or petition for declaratory judgment, the Railroad Yardmasters of America, defendant, denies every allegation of the complaint except as herein admitted, and alleges as follows:

1. That this defendant admits the allegations of paragraph 1 of the complaint except that it denies that the action is brought on behalf of, or that plaintiffs are representative of all the members of plaintiff organizations for the purpose of this suit, or that plaintiffs do or can maintain the complaint on behalf of others who may be similarly situated who are not members of said plaintiff organizations.

2. The defendant admits the allegations in the first subparagraph of paragraph 2 of the complaint, but denies that the classes of employees enumerated in the Railway Labor Act, over whose disputes jurisdiction is by said Act given to the said First Division, was intended to or did classify said enumerated types or classes of employees as train and yard service employees to include yardmasters.

Defendant admits that the defendants F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis are selected and designated for membership on said Division by Railway Labor Organizations which are national in scope, but alleges that said defendants are respectively members and national officers of, and are

71 chosen for membership on said Division by the Order of Railway Conductors of America, Brotherhood of Railroad Trainmen, Switchmen's Union of North America, Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen.

3. Defendant admits the allegations of paragraph 3

except that it denies that the action is instituted pursuant to the provisions of the Railway Labor Act as alleged, and denies that said complaint is or could be properly instituted under 28 U. S. C. A. section 400 (1), the Declaratory Judgments Act, for the reasons hereinafter set forth.

4. Defendant denies that V. E. Benjamin and M. L. Nagle, alleged to be yardmasters, are or could be, as alleged, otherwise known as yard service employees, and alleges that the said term "yard service employees" is a term of well established meaning and general usage on railroads, and in general usage there and in the Railway Labor Act its meaning is exclusive of those persons employed by carriers as, and performing the duties of, yardmasters.

Defendant has no knowledge of the remaining allegations in said paragraph 4 and therefore denies said allegations.

5. Defendant denies that W. W. May, alleged to be an assistant yardmaster, is or could be, as alleged, otherwise known as a yard service employee, and alleges that the said term "yard service employee" is a term of well established meaning and general usage on railroads, and in general usage there and in the Railway Labor Act its meaning is exclusive of those persons employed by carriers as, and performing the duties of, assistant yardmasters.

Defendant has no knowledge of the remaining allegations in said paragraph 5 and therefore denies said allegations.

6. Defendant admits the allegations of paragraph 6, but alleges that by reason of the fact that jurisdiction of disputes involving yardmasters is not given to the First, Second, or Third Divisions of said Board, the Fourth Division has such jurisdiction.

7. This defendant has no knowledge of the facts alleged in the first subparagraph of paragraph 7 of the complaint, and therefore denies said allegations.

Defendant admits that it appears from said Exhibit "C" to the complaint that the carrier members of the First Division referred to a decree entered by this court, in chancery, Cause No. 16031, wherein the Fourth Division of the National Railroad Adjustment Board was directed and commanded to take jurisdiction of disputes of yardmasters there involved, and to render awards thereon. Defendant denies the legal conclusion contained in said paragraph 7 of the complaint that said decree and its terms and provisions apply only to the particular disputes there involved, but alleges that said decree was an adjudication in rem

adjudicating the fact that jurisdiction over disputes involving yardmasters was not by said Railway Labor Act given to the First, Second, or Third Division of the National Railroad Adjustment Board, and that thereby jurisdiction over all such disputes was by said Act given to the Fourth Division.

Defendant denies that the defendants, members of the First Division, have never regarded said decree as having binding effect upon or command to the members of the First Division, but alleges that as shown by said Exhibit "C" to the complaint, the carrier members of said Division expressly recognized the validity, effect and full force of said decree as adjudicating that exclusive jurisdiction of disputes involving yardmasters was by said Act given to the Fourth Division; defendant further alleges that the labor members of said First Division, the plaintiffs, and the other officers of said plaintiff organizations have likewise recognized the full force and effect of said adjudication in this court, in Cause No. 16031, and that upon petition of said Order of Railway Conductors there was heretofore referred to the Fourth Division of said National Railroad Adjustment Board the same claim of V. E. Benjamin
73 and M. L. Nagle for loss of earnings by reason of reduction of force at Kelly Lake, Minnesota, being the same V. E. Benjamin and M. L. Nagle alleged to have subsequently asserted the same identical claim in Docket 6404, referred to in paragraph 7 of the complaint; that in said claim so submitted said Fourth Division in Docket No. 23, and by award No. 22, said Fourth Division on September 12, 1938, entered a final award finding that said Division had jurisdiction of the dispute and granting petitioner's request that the same be withdrawn.

8. Defendant denies the allegations of paragraph 8, and denies the legal conclusion that referees in the proceedings before said First Division referred to in said paragraph 8 of the complaint could or did sustain the jurisdiction of the First Division over disputes involving yardmasters, for the reason that the only one of said disputes or dockets set forth in Exhibits "D", "E", "F" and "G" to the complaint which was a dispute involving a yardmaster, was Docket 4504, said Exhibit "G", and as appears from said exhibit the award therein was entered on March 31, 1938, prior to the entry of the decree in this court in said cause No. 16031; defendant alleges further that in said disputes

referred to in paragraph 8 of the complaint, the defendant is informed and believes and upon such information and belief alleges the fact to be that the point of lack of jurisdiction of the First Division over yardmasters' cases was not in those dockets raised or brought to the said Division's attention by the respondent in said disputes; and defendant alleges further that no referee's decision as to jurisdiction would confer jurisdiction on said First Division in excess of the jurisdiction as limited by and outlined in the Railway Labor Act.

9. Defendant admits the allegation contained in the first sentence of paragraph 9, except that it denies that the said First Division has jurisdiction of disputes involving yard clerks, car inspectors and helpers, and track maintenance forces, the work of whom is alleged in said paragraph 9 of the complaint to be supervised by yardmasters.

Defendant denies that the duties of yardmasters are as alleged in said paragraph in cooperation and operation with the duties performed by employees in train, engine and yard service, and alleges that the duties of yardmasters do not include operation, cooperation, partial cooperation or performance, or assistance in the duties performed by employees engaged in train, engine and yard service, but the said duties performed by yardmasters consist exclusively of supervision of the work of said classes of employees, and are distinct from and different from the duties performed by yard service employees. Defendant alleges that the term "yard service" has in railroad terminology a distinct and well established meaning, and yardmasters do not perform the duties of, nor are they classified by the terms of section 3 (h) of the Railway Labor Act as yard service employees.

10. Defendant denies the allegations of paragraph 10. Defendant alleges that plaintiffs do have a plain and adequate remedy at law. Defendant alleges that plaintiffs may obtain hearing and determination of the said disputes referred to in the complaint by submission of said complaints to the Fourth Division of said Board, which said Fourth Division has exclusive jurisdiction to hear and determine disputes involving yardmasters, since by the terms of said Act jurisdiction to hear such disputes is not given to any other Division of the Board.

11. Defendant denies the allegations contained in paragraph 11 of the complaint, and denies that plaintiffs, or either of them, are entitled to any of the relief prayed.

Affirmative Defenses.

And for its further and affirmative defenses, defendant alleges and shows that:

1. The Fourth Division of said National Railroad Adjustment Board and the individual members thereof, as well as the respondents in the two said dockets now
75 alleged to be pending, viz.; the Great Northern Railway Company, a corporation, and the Southern Pacific Company (Pacific Lines), a corporation, are necessary parties defendant who have not been joined as parties defendant.

2. That the said V. E. Benjamin, M. L. Nagle and W. W. May, alleged in paragraphs 4 and 5 of said complaint to be the claimants against said carriers, are necessary parties plaintiff who have not been joined as plaintiffs.

3. Said complaint is fatally defective in that, although it purports to be a representative or class action on behalf of persons not made parties, no facts are alleged which show the identity, number, residence, interest, or type of claim of said persons, or the source, amount, or identity of interest with plaintiffs on the part of the said persons in behalf of whom the declaratory judgment is sought.

5. No facts are alleged in the complaint to support the further legal conclusion contained in paragraph 10 "that plaintiffs have no adequate remedy at law as against
76 the said Acts of the First Division which have been and are being committed * * *." It appears from the complaint and from the exhibits thereto, and particularly from Exhibits "A" and "B", that the claims of the said V. E. Benjamin, M. L. Nagle and W. W. May are based upon contract rights for which they have adequate remedy in United States courts or in State courts of general jurisdiction, the provisions of said Railway Labor Act for the hearing of such disputes by the National Railroad Adjustment Board not being an exclusive remedy.

6. No facts are alleged to support the further legal conclusion contained in said paragraph 10 "that the plaintiffs, and the members thereof, will suffer great and irreparable injury if said relief shall be refused."

7. That it appears on the face of the complaint that the plaintiffs, The Order of Railway Conductors of America, and the Brotherhood of Railroad Trainmen do not have any direct interest, legal, equitable or otherwise, in the said disputes pending before the said First Division, but as ap-

pears from paragraphs 4 and 5 of the complaint the claims of the individuals who do have such direct interest against the carriers were merely represented by the said plaintiffs in the filing and presentation of said disputes to the National Railroad Adjustment Board, and as appears from Exhibit "A", the claimants against the Great Northern Railway Company are V. E. Benjamin and M. L. Nagle, and their claims are based upon an agreement between said carrier and the Great Northern Yardmasters Association; that, as appears from Exhibit "B", the claimant in the dispute against the Southern Pacific Company, alleged to be pending before said First Division is W. W. May, and that his claim is alleged to be based upon Articles 3 and 9 of an agreement between the carrier and the Railroad Yardmasters of America, and that the plaintiff Brotherhood of Railroad Trainmen has no direct legal or equitable interest in said dispute or said agreement.

77 8. That no facts are alleged to support the legal conclusion contained in paragraph 10 of the complaint that the National Mediation Board "in appointing referees to sit with the First Division members thereof, in disputes involving yardmasters, caused to be definitely established in said First Division jurisdiction to hear, determine and render awards involving disputes of yardmasters as yard-service employees * * *", but by the terms of said Railway Labor Act, and particularly § 3 (h) and § 5, it appears that the National Mediation Board and the members thereof have no legal power definitely to establish or to confer upon the First or any other division jurisdiction of any kind, the jurisdiction of each of said divisions of the National Railroad Adjustment Board being limited and defined by the Railway Labor Act.

78 10. The complaint, and particularly paragraphs 6 and 7, discloses that plaintiffs are primarily attempting to procure, under the guise of a declaratory judgment, an adjudication that the only division of the National Railroad Adjustment Board which has jurisdiction of yardmasters' disputes, is that division, the labor members of which are appointed and controlled by the plaintiffs; and that the prayer or demand for relief, subdivision 3, by which the court is asked to adjudicate that the First Division is not bound by the provisions of the decree of this court, in chancery, No. 16031, is a collateral attack upon a valid and binding adjudication, which collateral attack is being made

as the complaint discloses by voluntary unincorporated associations who have no direct legal interest in the subject matter of said decree, nor in the relief now sought by declaratory judgment, and no allegation is made that any individual members of said plaintiff organizations or persons eligible to membership therein are yardmasters or claimants in pending disputes who do have such direct legal interest in a justiciable controversy such as is embraced within the terms of the Declaratory Judgments Act.

11. This court has no power, and it would be inappropriate, to grant a declaration, as prayed in paragraph 3 of the prayer for relief, that the First Division of the National Railroad Adjustment Board is not bound by the provisions of the decree entered by this court in chancery case No. 16031, for the reason that the limits and effect of that decree are defined exclusively by the pleadings there and the decree based thereon; that this court cannot by declaratory judgment procedure review its prior judgments.

79 13. The facts alleged in the petition for declaratory judgment fail to show that there exists between plaintiffs and defendants at the present time an actual justiciable controversy; said petition likewise shows on its face that granting the relief prayed would not terminate any uncertainty as to the jurisdiction between respective divisions of the National Railroad Adjustment Board.

14. The supposed controversy with respect to which a declaration is sought and the jurisdiction of yardmasters' cases among the divisions of the National Railroad Adjustment Board has been adjudicated by this court in chancery case No. 16031, entitled "Railroad Yardmasters of America, et al. *vs.* National Railroad Adjustment Board, Fourth Division, et al." and the decree therein which is attached hereto and made a part hereof as Exhibit "A" is res adjudicata of the issues raised and of the rights sought to be declared by the petition for declaratory judgment herein.

Counterclaim for Declaratory Judgment.

And for its counterclaim against the plaintiffs, as well as against the original defendants herein, the Railroad Yardmasters of America alleges that:

1. The Railroad Yardmasters of America is a voluntary unincorporated association, and is a standard labor organi-

zation, national in scope, whose members are persons engaged in the service of carriers by rail in the capacity of yardmasters; that at the present time the said Railroad Yardmasters of America has collective bargaining agreements in full force and effect on more than twenty-five rail carriers in the United States covering in excess of 97,000 miles of railroad properties, representing in excess of fifty-four per cent (54%) of the total mileage of rail carriers of the United States on which persons employed thereby as yardmasters are represented by labor organizations having in effect collective bargaining agreements on behalf of yardmasters.

2. By the terms of the Railway Labor Act as amended by Act of Congress June 21, 1934 (45 U. S. C. A. Section 153 (3)) there is created a quasi-judicial or administrative Federal Board known as the National Railroad Adjustment Board, and by said Act it is further provided:

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

'First division: To have jurisdiction over disputes involving train-and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

'Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

'Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by

the carriers and five by the national labor organizations of employees.

'Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.' ''

81 3. That yardmasters, and persons employed by rail carriers as or performing the duties of yardmasters, are not included in any of the classes of employees over whose disputes jurisdiction is by said Act given to the First, Second, or Third Divisions, respectively, of said National Railroad Adjustment Board.

4. The counterclaimant has heretofore presented and referred to the Fourth Division of the National Railroad Adjustment Board, for and on behalf of yardmasters whom it represented, numerous disputes against railroad carriers; that it will in the future, in its capacity as representative of its individual members who are yardmasters as aforesaid, have occasion to bring and refer to said Division other and further of said disputes which are now in process of attempted settlement by negotiation on the respective railroad properties. Said counterclaimant has heretofore appeared as plaintiff in that certain chancery proceeding, No. 16031, in this court, entitled "United States ex rel. Railroad Yardmasters of America, et al. *vs.* National Railroad Adjustment Board, Fourth Division, et al." and procured the entry of a decree therein, copy of which is attached hereto and made a part hereof as Exhibit "A", in and by the terms of which it was adjudicated that the Fourth Division of said Board has jurisdiction of disputes involving yardmasters, arising between carriers by rail and their employees or groups of employees growing out of the interpretation of agreements as to wages, rates of pay, and working conditions.

5. The said Fourth Division is now and has been since the entry of said decree on July 11, 1938, receiving, docketing, hearing, and entering awards in disputes referred to said Division by this counterclaimant and other representatives of yardmasters, as by the terms of the said Railway Labor Act said Division is required to do.

82 6. The original defendants herein are members of the First Division of said National Railroad Adjustment Board, an administrative or quasi-judicial body created by the Railway Labor Act as amended June 21, 1934, 45 U. S. C. A. 151-163; the said Board and the First Division thereof maintains its headquarters and holds its meetings and hearings in the City of Chicago, State of Illinois, Northern District.

7. Defendants are, and at all of the times mentioned herein were, the duly appointed, qualified and acting members of the First Division of said National Railroad Adjustment Board, and as such members hold their appointments and exercise their functions under and by virtue of the Act of Congress aforesaid, the Railway Labor Act; and are the regular members of said Division appointed and acting as such.

8. Counterclaimant brings this counterclaim for itself and on behalf of its individual members, who are employed as or perform the services of yardmasters, and on behalf of all other persons who are similarly employed who are not members of the Railroad Yardmasters of America.

Wherefore, counterclaimant prays that this court by declaratory judgment declare and adjudge that the Fourth Division of the National Railroad Adjustment Board has sole and exclusive jurisdiction to hear, docket, entertain and enter awards in disputes involving yardmasters which have heretofore been referred to said Board under the terms of the Railway Labor Act and remain undetermined, and which may hereafter be referred to said National Railroad Adjustment Board.

Railroad Yardmasters of America,
Defendant,
By C. H. Burchfield.

Anan Raymond,
Robert Z. Hickman,
Attys. for Railroad Yardmasters of America,
11 S. La Salle St.

83 State of Illinois, } ss.
County of Cook. }

C. H. Burchfield, being first duly sworn, upon his oath deposes and says that he is the President of the Railroad Yardmasters of America, and that he has read the above and foregoing answer by him subscribed on behalf of, and for said Railroad Yardmasters of America; that he is fully authorized to make this verification on behalf of said Railroad Yardmasters of America, and that he has personal knowledge of the facts and things set forth in said answer and that the allegations contained therein are true.

C. H. Burchfield.

Subscribed and Sworn to before me this 30th day of January, A. D. 1942.

M. E. Borkenhagen,
(Seal) *Notary Public.*

84 EXHIBIT "A"

IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—16031) * *

FINAL DECREE AND INJUNCTION

This cause coming on to be heard on this date upon the original petition of the petitioners, the joint and several answer of respondents E. J. Hamner, Charles P. Neill and E. Murrin, and on motion of petitioners that the said petition be taken as confessed as against the other respondents herein, and after hearing evidence herein and argument of counsel, and being fully advised in the premises, the court finds:

1. That the individual respondents constitute the Fourth Division of the National Railroad Adjustment Board, established and created by the laws of the United States, 45 U.S.C.A. Section 153 (3), and that they are presently the duly constituted, qualified and acting members of said Fourth Division.

85 2. That the said National Railroad Adjustment Board, so created and established, and the said Fourth Division thereof, have and maintain headquarters and

conduct their hearings in the City of Chicago, State of Illinois.

3. That the petitioners, R. V. Murphy, J. Besant and E. E. Wheeler, are and were at all of the times mentioned in the original petition members of the Railroad Yardmasters of America, which was and is a national labor organization of the employees of carriers as the term is used in the Railway Labor Act (45 U.S.C.A. Section 153 (3)), and were employed as yardmasters by the Southern Pacific Company (Pacific System), a railroad carrier engaged in interstate commerce, and were so employed at all of the times mentioned in the original petition herein.

4. That in and by the terms of said Railway Labor Act, 45 U.S.C.A. Section 153, it is provided:

"'(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

'First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

'Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

86 'Third division: To have jurisdiction over disputes involving station, tower and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

'Fourth division: To have jurisdiction over disputes

involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.' "

5. That yardmasters are not included in any of the classes of employees over whose disputes jurisdiction is by said Act given to the First, Second or Third Divisions, respectively, of said National Railroad Adjustment Board, nor do either of said last mentioned divisions of said Board have jurisdiction of disputes arising out of their employment in which yardmasters are involved.

6. That on March 21, 1938, the petitioner, Railroad Yardmasters of America, acting for and on behalf of the said petitioners, R. V. Murphy, J. Besant and E. E. Wheeler, filed with the said Fourth Division of the National Railroad Adjustment Board an *ex parte* submission of disputes which had theretofore arisen between said respective individual petitioners and said carrier by whom they were employed as yardmasters; copies of which said *ex parte* submissions and statements of grievances are attached to the original petition herein and by reference thereto are made a part hereof as fully as if set out here verbatim.

7. That thereafter, on March 24, 1938, the said Fourth Division of the National Railroad Adjustment Board
87 failed and refused to hear and adjudicate the said three *ex parte* submissions or cases and with respect thereto adopted and entered of record in their proceedings a memorandum or resolution stating that the said Fourth Division had deadlocked on the question of assuming jurisdiction to receive and hear the said cases or disputes.

8. That the said Fourth Division of the National Railroad Adjustment Board had and now has jurisdiction to docket, hear and adjudicate said submissions, cases or disputes, and that on March 21, 1938, it became and was the duty of said Fourth Division and the individual members thereof to docket, hear and adjudicate the said three *ex parte* submissions or disputes.

9. That the National Mediation Board has in the past refused, and now continues to refuse, to appoint a neutral referee to the respective divisions of the National Railroad Adjustment Board upon their failure to render an award

in a dispute submitted to them when such failure or refusal is a failure or refusal to accept, docket and hear a dispute or submission when the said failure or refusal results from a deadlocking on the question of assuming jurisdiction of the parties or subject matter of said submission or dispute; and that particularly, the said National Mediation Board has refused, and continues to refuse to appoint a neutral referee to the said Fourth Division of said National Railroad Adjustment Board; to hear and determine said three *ex parte* disputes lodged with the Fourth Division by the individual petitioners herein as above set forth, and that a request for the appointment of a neutral referee to said Fourth Division by any of the parties to the above mentioned three submissions or disputes is useless and unavailing.

88 10. That the duty and jurisdiction of the said Fourth Division of the National Railroad Adjustment Board, to take jurisdiction of and hear and determine said *ex parte* disputes or submissions, arises under the laws of the United States.

11. That the said E. J. Hamner, Charles P. Neill and E. Murrin have entered their general appearance herein and have filed their joint and several answer to the original petition; that the said R. A. Walton, S. J. Hogan, R. B. Parkhurst, and the Fourth Division of the National Railroad Adjustment Board have each entered their general appearance herein.

12. That after the entry of the respective appearances of the said respondents, there was entered herein on May 9, on motion of Michael L. Igoe, United States District Attorney, and by agreement of the petitioners, an order extending the time for all respondents to plead to the petition, to May 25, 1938; that on May 24, 1938, there was entered herein an order extending the time for all respondents to plead, to and including June 25, 1938, and that such time has now expired with no pleading having been filed, except the answer of the three individual respondents as above set forth.

13. That as to the individual respondents R. A. Walton, S. J. Hogan, R. B. Parkhurst, and National Railroad Adjustment Board, Fourth Division, the original petition herein is taken as confessed for want of any plea, answer or demurrer thereto; and that after the entry of appearances of the other individual respondents, and on June 25,

1938, the time for said respondents to plead to the original petition expired, and that none of said respondents, except the said E. J. Hamner, Charles P. Neill and E. Murrin, have filed any plea, answer or demurrer to the original petition herein, and that as to all of said individual respondents who have entered their appearance and have not filed any plea, answer or demurrer, the said petition is taken as confessed.

89 14. That this Court has jurisdiction of all of the parties hereto and of the subject matter hereof, and that the equities in said cause are with the petitioners.

15. That all the allegations of the original petition are here found as findings of fact, the same as if the said allegations were here set out in full verbatim.

15. The Court finds the petitioners are entitled to the relief as prayed in the original petition and are entitled to the issuance by this Court of a mandatory writ of injunction, directing, ordering and commanding the said Fourth Division of the National Railroad Adjustment Board, and the individual members thereof, to accept, docket, take jurisdiction of, and hear said three *ex parte* submissions or disputes, lodged and filed with the said Fourth Division by the petitioners as above set forth, and to render awards on the merits in each of said disputes.

16. The Court further finds each and every of the above and foregoing as conclusions of law, and the above and foregoing findings of fact and conclusions of law are by reference thereto included in and made a part of this final decree.

It is, therefore, ordered, adjudged and decreed that the Fourth Division of the National Railroad Adjustment Board, C. W. Deal, R. B. Parkhurst, A. J. Hancock, R. A. Walton, Charles P. Neill, E. J. Hamner, S. J. Hogan and E. Murrin, individually, and as members of said Fourth Division of the National Railroad Adjustment Board, and their successors on such division, and their agents, officers, attorneys and servants, be, and they hereby are enjoined and commanded to take jurisdiction of, to docket, hear, determine and enter awards on the merits in the said three *ex parte* submissions or disputes, heretofore filed with

90 said Fourth Division of the National Railroad Adjustment Board, on or about March 21, 1938, by the petitioner Railroad Yardmasters of America, acting for and on behalf of the said R. V. Murphy, J. Besant and E. E.

Wheeler, petitioners, and that the terms of this final decree and injunctional order shall be perpetually in effect.

It is further ordered that the sum of $20.06 taxed herein as the costs of the petitioners, be paid by the said respondents to the petitioners and that they have execution therefor.

Holly,
Judge, District Court.

Entered this 11th day of July, 1938.

91 And afterwards on, to wit, the 24th day of February, 1942, came the Great Northern Railway Company by its attorneys and filed in the Clerk's office of said Court its certain Notice and Answer of Intervener, in words and figures following, to wit:

92 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—3788) * *

NOTICE OF MOTION OF GREAT NORTHERN RAILWAY COMPANY FOR LEAVE TO INTERVENE

To:

V. Craven Shuttleworth, W. H. Endle and Everett L. Gordon, Attorneys for Plaintiffs, 100 West Monroe Street, Chicago, Illinois;

Sydney R. Prince, Jr., Attorney for Defendants E. W. Fowler, T. K. Faherty, R. A. Knoff, L. L. McDonald and L. O. Murdock, 220 South State Street, Chicago, Illinois;

Leo J. Hassenauer, Attorney for Defendants F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis, 105 West Adams Street, Chicago, Illinois;

Poppenhusen, Johnston, Thompson & Raymond, Anan Raymond and Robert Z. Hickman, Attorneys for Interveners Railroad Yardmasters of America, 11 South La Salle Street, Chicago, Illinois;

Please take notice that on Tuesday, February 24, 1942, at the opening of court in the forenoon, or as soon thereafter as counsel can be heard, we shall appear before
93 the Hon. Charles E. Woodward, one of the judges of said court, in the courtroom usually occupied by him

in the United States Court House, Chicago, Illinois, or in his absence before such other judge as may be hearing motions in his stead, and shall present the motion of Great Northern Railway Company, a corporation, for an order permitting it to intervene as a defendant in the above-entitled action and permitting the form of answer, of which a copy is hereto attached, to be the answer of said intervener in this action; at which time and place you may appear if you see fit.

Such motion will be made upon the following grounds:

(1) Applicant is the party against which the claim is asserted in the petition filed with the National Railroad Adjustment Board, First Division, by V. E. Benjamin and M. L. Nagle, which petition is referred to in paragraph 4 of the complaint in this action, and applicant is the Great Northern Railway Company which filed the ex parte submission denying the jurisdiction of said First Division, as stated in said paragraph 4 of the complaint;

(2) Applicant Great Northern Railway Company is entitled to intervene as of right for the reason that it is directly interested in this action and representations of applicant's interest by the defendants may be inadequate and the applicant may be bound by a judgment in this action;

(3) Applicant's claim and defense as herein set forth in the attached form of proposed answer and the main action have questions of law and fact in common;

(4) Applicant's intervention will not unduly, or at all, delay or prejudice the adjudication of the rights of the original parties.

Said motion is based upon all of the records, files and papers in this action, including this notice of motion
94 and the said proposed answer, a copy of which is hereto attached.

Dated this 20th day of February, 1942.

Winston, Strawn & Shaw and
Bryce L. Hamilton,
First National Bank Building,
Chicago, Illinois,
Attorneys for Intervener,
Great Northern Railway Company.

F. G. Dorety,
R. J. Hagman,
1120 Great Northern Building,
St. Paul, Minnesota.
Of Counsel.

Received a copy of the foregoing notice and a copy of the proposed answer of intervener mentioned therein, this 20th day of February, 1942.

V. Craven Shuttleworth,
W. H. Endle,
Everett L. Gordon,
Attorneys for Plaintiffs.
Sydney R. Prince, Jr.,
Attorney for Defendants, E. W. Fowler, et al.
Leo J. Hassenauer,
Attorney for Defendants, F. J. Williams, et al.
Anan Raymond,
Robert Z. Hickman,
Attorneys for Intervening Defendants, Railroad Yardmasters of America.

95 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—3788) * *

ANSWER OF INTERVENER GREAT NORTHERN RAILWAY COMPANY

Intervening Great Northern Railway Company, a corporation, makes the following answer to the complaint of the plaintiffs herein:

I.

Answering paragraph 1 of the complaint, intervener alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last sentence of said paragraph, but admits the allegations contained in the remainder of said paragraph.

II.

Answering paragraph 2 of the complaint, intervener denies that the defendants named in the complaint are
96 permanent members of the First Division of the National Railroad Adjustment Board, but admits the remaining allegations of that paragraph.

III.

Answering paragraph 3 of the complaint, intervener admits that this is a suit of a civil nature for a declaratory judgment, brought pursuant to the Federal Declaratory Judgments Act of 1934 (28 U. S. Code 400), and arising under the Railway Labor Act, as amended (45 U. S. Code 151-163); that there is involved in this suit the construction and interpretation of certain provisions of said Railway Labor Act, and that this Court has jurisdiction of this action and of the parties hereto.

IV.

Answering paragraph 4 of the complaint, intervener admits the filing of a so-called ex parte submission by the Order of Railway Conductors of America against the Great Northern Railway Company with the First Division of the National Railroad Adjustment Board, and admits that the Great Northern Railway Company in the said Docket No. 6404 protested the hearing or rendition of any award in said dispute on the ground that jurisdiction over the said dispute was not vested in the First Division. Intervener denies that V. E. Benjamin and M. L. Nagle, yardmasters, are "otherwise known as yard-service employees," and avers to the contrary that when acting as yardmasters they are subordinate officials exercising managerial functions. Intervener admits that the Carrier Members of the First Division declined to agree to set said dispute for hearing, and admits that Exhibit "A" annexed to the complaint is a copy of the ex parte submission filed with the First Division on behalf of said yardmasters but denies that the statements therein are true and correct, except as otherwise herein admitted.
97 Intervener denies all other allegations of paragraph 4 of the complaint.

V.

Answering paragraph 5 of the complaint, intervener alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, except that it admits that such a proceeding as is referred to therein was begun before the First Division of the National Railroad Adjustment Board and that the Southern Pacific Company pro-

tested the jurisdiction of the First Division in connection therewith.

VI.

Answering paragraph 6 of the complaint, intervener alleges that the Fourth Division of the said National Railroad Adjustment Board, created under Section 3, First (h) of the said Railway Labor Act, is composed of six members, three of whom are selected by the carriers and the other three by national labor organizations of the employees. The labor organization and the members selected by them holding office from time to time on the Fourth Division have been and are as follows:

The National Marine Engineers' Beneficial Association selected Charles M. Sheplar, who was succeeded March 25, 1935, by William S. Brown, who in turn was succeeded April 2, 1937, by S. J. Hogan, who on March 31, 1941, was succeeded by the present incumbent, J. H. Blake; and the International Longshoremen's Association selected J. J. Noonan, who on March 14, 1936, was succeeded by R. A. Walton; and the Inland-boatment's Union of the Pacific selected C. W. Deal, who on March 31, 1941, was succeeded by J. M. Fox.

Intervener admits that the Fourth Division has the jurisdiction specified in Second 3, First (h) of the
98 Railway Labor Act. All other allegations of said paragraph 6, not otherwise expressly admitted, are denied by intervener.

VII.

Answering paragraph 7 of the complaint, intervener admits that on August 28, 1941, the Carrier Members of the First Division of the National Railroad Adjustment Board addressed to the Labor Members of the said First Division a communication, of which Exhibit "C" referred to in said paragraph 7 of the complaint is a copy, in which the said Carrier Members advised the Labor Members that they would not participate in any consideration of the merits in nine specified dockets, among which were Dockets Nos. 6404 and 12295, and in which they made other statements as set forth in said Exhibit "C." Intervener admits that the Carrier Members of the First Division declined to agree to set said Dockets Nos. 6404 and 12295 for hearing and to enter awards thereon.

Intervener denies each and all of the allegations of the second and third paragraphs of said paragraph 7 of the complaint in which the plaintiffs set out their legal conclusions respecting the decree entered by this Court in Chancery Docket No. 16031.

VIII.

Answering paragraph 8 of the complaint, intervener admits that, substantially as alleged in said paragraph, said First Division undertook to exercise jurisdiction over and to render awards upon the disputes referred to in said paragraph, and that the several exhibits "D," "E," "F" and "G" annexed to said complaint are copies of said awards; but intervener alleges that no question as to
99 the jurisdiction of the said First Division to consider, or hear, or determine said disputes was raised by any of the respective carriers respondent in said proceeding.

IX.

Answering paragraph 9 of the complaint, intervener denies each and all of the allegations thereof, except Intervener admits that the duties of yardmasters, employed exclusively by rail carriers, include directing the work of the several classes of employees employed in a rail carrier yard, including engine crews, foremen, conductors, helpers, brakemen, engineers and firemen, switchtenders, yard clerks, car inspectors and helpers, track maintenance forces, road train and engine crews in train movement to and from rail yard and hostlers and helpers in movement of light engines to and from said rail yard, but such direction is not exercised solely by yardmasters.

Intervener alleges that in the performance of their duties railroad yardmasters have charge of yards and are responsible for conditions within such yards; that trains and engines, and all employees in train, engine, or yard-service in yards are subject to their direction and control; that they are required to see that employees within yards are in condition for the proper discharge of their duties; that all persons employed in yard-service within such yards are subject to their instructions; that they are responsible for the proper makeup and movement of trains through yards, the prompt and proper handling of cars, and fulfillment of all requirements as

to the movement, handling and protection of cars and of the freight contained therein. In the discharge of their duties yardmasters necessarily exercise a substantial measure of individual initiative and responsibility. They
100 form, and in general railroad practice, have been recognized as forming, a distinct class of employees; and because of their responsibilities and the character of supervision and direction which they are required to and do exercise, all as above described, they have been classed and are generally referred to and designated as "subordinate officials," and are not and never have been classed or described or regarded as "yard-service employees" within the established meaning of that term as understood and employed in the railroad industry, or as the same appears in Section 3 (h) of the Railway Labor Act.

X.

Answering paragraph 10 of the complaint, intervener admits that, substantially as alleged in said paragraph 10, no further remedy or relief can be obtained from the defendants, the ten members of the First Division of the National Railroad Adjustment Board, toward the hearing and determination by said First Division of disputes involving yardmasters and arising out of the service of yardmasters as employees of carriers; but the intervener denies each and every other allegation of said paragraph 10, and denies in particular that said plaintiffs have pursued, undertaken, or exhausted any remedy or remedies available to them, under the Railway Labor Act or otherwise, for the purpose of obtaining the hearing and determination of disputes involving yardmasters, as aforesaid, by the Fourth Division of said Board. In this behalf intervener alleges that exclusive jurisdiction to hear and determine such disputes is by law vested and resides in said Fourth Division.

101 Answering paragraph 11 of the complaint, intervener denies each and every allegation thereof; and in this behalf alleges that the plaintiffs and each of them, to the extent that they, or either, or any of them, represent, either singly or collectively, any persons employed by carriers as yardmasters, are fully able to obtain a fair, adequate and lawful hearing and determination of each and every dispute and claim arising out of the employment of or involving any such yardmaster, which is or may be

subject to handling under the provisions of the Railway Labor Act and particularly Section 3 thereof, by presenting and submitting such claim or claims to the Fourth Division, National Railroad Adjustment Board; which said Division, as heretofore alleged, has full and exclusive jurisdiction over such disputes.

Wherefore, intervener prays:

(1) That the relief prayed for in the complaint be denied;

(2) That the Court declare that the exclusive jurisdiction of such disputes involving yardmasters as are mentioned in the complaint is vested in the Fourth Division of the National Railroad Adjustment Board; and

(3) That intervener be granted such other and further relief as may be proper in the premises.

Winston, Strawn & Shaw and
Bryce L. Hamilton,
First National Bank Building,
Chicago, Illinois,
Attorneys for Intervener, Great Northern Railway Company.

F. G. Dorety,
R. J. Hagman,
1120 Great Northern Building,
St. Paul, Minnesota.
Of Counsel.

102 And afterwards, to wit, on the 9th day of March, 1942, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

103 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—3788) * *

ORDER

This cause coming on to be heard on the motion of Great Northern Railway Company for an order permitting it to intervene as a defendant herein, and the Court having heard the arguments of counsel, and being fully advised in the premises, finds that said motion should be granted;

It is Therefore Ordered that Great Northern Railway Company be, and it is, hereby given leave to intervene as a party defendant in the cause, and that the answer of Great Northern Railway Company accompanying its Notice of Motion for leave to intervene shall stand as its answer in this cause.

Enter: Charles E. Woodward:
March 9, 1942. *U. S. District Judge.*

104 And on the same day, to wit, on the 9th day of March, 1942, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

105 In the District Court of the United States
* * (Caption—3788) * *

ORDER

This cause coming on for hearing on the motion of the Southern Pacific Company for leave to intervene as a defendant therein and for leave to file its answer instanter, and the Court being fully advised in the premises:

It Is Ordered that the Southern Pacific Company be, and is hereby, granted leave to intervene in this cause and is granted further leave to file its answer therein instanter.

Enter: Charles E. Woodward,
Judge.

Dated: Chicago, Illinois,
March 9th, 1942.

106 And afterwards on, to with, the 11th day of March, 1942, came the Intervener, Southern Pacific Company by its attorneys and filed in the Clerk's office of said Court its certain Notice of Motion for Leave to Intervene and Answer of Intervener, in words and figures following, to wit:

107 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—3788) * *

NOTICE OF MOTION FOR LEAVE TO INTERVENE.

To the above-named plaintiffs and to their attorneys, V. Craven Shuttleworth, W. H. Endle and Everett L. Gordon:

To the defendants, E. W. Fowler, T. K. Faherty, R. A. Knoff, L. L. McDonald and L. O. Murdock, and to their attorney, Sydney R. Prince, Jr.:

To the defendants, F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis, and to their attorney, Leo J. Hassenauer:

Please Take Notice that on Monday, February 16th, 1942, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, the Southern Pacific Company, a corporation, will appear before His Honor, Judge Charles E. Woodward, in the court room usually occupied by him in the Federal Building, Chicago, Illinois, and move the court 108 for an order permitting it to intervene as a defendant in the above entitled action and permitting the form attached hereto, and made a part hereof, to be the answer of the said intervener in said action.

Said motion will be made upon the following grounds:

1. Applicant is entitled to intervene as of right for the reason that it is directly interested in this action and that the representation of applicant's interest by the defendants may be inadequate and applicant may be bound by the judgment in said action;

2a. Applicant's claims and defenses herein as set forth in the attached form of answer, and the main action have questions of law and fact in common;

2b. Applicant's intervention will not unduly or at all delay or prejudice the right of the original parties.

Said motion will be based upon all of the records, files and papers in this suit, including this notice of motion and the said form of answer attached hereto.

Dated: February 14th, 1942.

John A. Sheean,
208 South LaSalle Street,
Chicago, Illinois,
Attorney for Southern Pacific Company, a corporation, Applicant.

Henley C. Booth,
Burton Mason,
65 Market Street,
San Francisco, California,
Of Counsel.

Received a copy of the foregoing Notice of Motion, 109 together with copy of the proposed Answer in Intervention, this 14th day of February, 1942.

V. Craven Shuttleworth,
W. H. Endle,
By E. L. Gordon, *of Counsel,*
Attorneys for Plaintiffs.

Sydney R. Prince, Jr.,
Attorney for Defendants E. W. Fowler, T. K. Faherty, R. A. Knoff, L. L. McDonald and L. O. Murdock.

Leo J. Hassenauer,
Attorney for Defendants, F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis.

110 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—3788) * *

ANSWER OF INTERVENER.

The above-named intervener, Southern Pacific Company, a corporation, by leave of the Court first obtained, files its answer as follows to the plaintiffs' complaint herein:

First Defense.

For a first defense to said complaint, and to the alleged cause or causes of action therein, intervener admits, alleges and denies as follows:

I.

Intervener denies each and all of the allegations of that portion of paragraph 1 of said complaint commencing with the words "The plaintiffs bring" (line 16, page 2, of the complaint) and ending with the words "organization or not" (line 21 of said page 2). Intervener admits the 111 allegations of the remainder of said paragraph 1.

II.

Intervener admits the allegations of paragraph 2 of said complaint.

III.

Answering paragraph 3 of the complaint, intervener admits that this is a suit of a civil nature for a declaratory judgment, brought pursuant to the Federal Declaratory Judgments Act of 1934 (28 U. S. Code 400), and arising under the Railway Labor Act, as amended (45 U. S. Code 151-163); in that there is particularly involved in this suit the construction and interpretation of certain provisions of said Railway Labor Act; intervener therefore admits that this Court has jurisdiction of this action, and of the parties hereto.

IV.

Answering paragraph 4 of said complaint, this intervener states that it has no information or belief sufficient to enable it to answer the allegations of said paragraph, and therefore denies each and every allegation of said paragraph for lack of such information and belief; except that intervener admits all those allegations of said paragraph 4 which are predicated upon official public records of the First Division of the National Railroad Adjustment Board.

V.

Answering paragraph 5 of said complaint, intervener alleges and shows that it is the employer identified in said paragraph 5 as "Southern Pacific Company (Pacific Lines), a corporation"; admits that W. W. May, the individual employe named and referred to in said paragraph 5, was heretofore employed by intervener as a yardmaster or assistant yardmaster; but denies that said May, as said yardmaster, was, while so employed, "otherwise known as a yard service employe", as in said paragraph 5 alleged.
112 Intervener admits that the claim and dispute of said May, as yardmaster, against this intervener as his employer, was handled in the usual manner required by the Railway Labor Act, up to and including the Chief Operating Officer of intervener designated to handle such disputes; admits further that thereafter plaintiff, Brotherhood of Railroad Trainmen, as petitioner, undertook to refer said claim and dispute of said May to the First Division of the National Railroad Adjustment Board, and purported to present to and file with said First Division a document styled by said plaintiff as an "Ex Parte Submission", substantially in the form of Exhibit "B" attached to said complaint; but in this behalf intervener alleges that said attempted reference of said dispute to said First Division, and the purported docketing thereof by said Division, were and each of them was wholly null and void and without any legal effect whatsoever, for the reason, as hereinafter more fully set forth, that no jurisdiction to entertain, consider, or decide said claim and dispute was or is lawfully vested in said First Division, exclusive jurisdiction thereof having been lawfully vested in the Fourth Division of said Board.

Intervener admits each and all of the remaining allegations of said paragraph 5 of the complaint, not otherwise herein denied.

VI.

Answering paragraph 6 of the complaint, intervener admits the allegations of the first two sentences of said paragraph; and in this behalf alleges that each and all of the members of the Fourth Division of the National Railroad Adjustment Board, including in particular the labor members referred to in said paragraph 6, at all times mentioned in said complaint have been, and now are, duly selected and appointed to said Fourth Division, in accordance with the provisions of Section 3 of the Railway Labor Act, and at all said times have been, and now are, the duly and
113 lawfully selected, qualified and acting members of said Fourth Division.

Intervener denies each and all of the allegations of the third sentence of said paragraph 6, commencing with the words "that the labor", in line 22 on page 7 of said complaint, and concluding with the words "Railway Labor Act", in line 2, page 8 thereof.

VII.

Answering paragraph 7 of said complaint, intervener admits the allegations of the first and second sentences of said paragraph 7; and denies each and every other allegation in the remainder of said paragraph, commencing with the words "that the terms", appearing in line 22 on page 8, and concluding with the words "yard service employees" in line 11, page 9, of the complaint.

VIII.

Answering paragraph 9 of said complaint, intervener admits that, substantially as alleged in said complaint, said First Division undertook to exercise jurisdiction in the disputes referred to in said paragraph, and to make and render awards therein, and that the several Exhibits "D", "E", "F" and "G", annexed to said complaint, are copies of said purported awards; but intervener alleges that no question as to the jurisdiction of said Division to consider or hear or determine said disputes was presented to or

decided by said Division in either or any of said disputes; that the assumption of jurisdiction, as aforesaid, by said First Division was in all respects, as to each of said cases, wholly without any legal warrant or justification whatsoever; and that each and all of said purported awards referred to in said paragraph 8 of the complaint, to wit, Awards Nos. 3609, 4077, 4150 and 2712 of said First Division, were and are wholly void, and of no legal or binding effect whatsoever.

IX.

114 Answering paragraph 9 of said complaint, intervener denies each and all of the allegations of said paragraph. In this behalf intervener alleges and shows that the duties of a railroad yardmaster consist primarily of directing and supervising subordinate employes, including engineers, firemen, hostlers, conductors, yard foremen, yardmen, helpers, brakemen, switch tenders, and other similar train-service and yard-service employes, when in the performance of their duties in and about railroad yards and terminals; that railroad yardmasters have charge of yards, and are responsible for conditions therein, and for the prompt and proper movement and handling of engines, trains, and cars in such yards; that said yardmasters are required, in the performance of their duties, to exercise a considerable measure of individual initiative and responsibility; that by reason of the general nature of their said duties and responsibilities, yardmasters are therefore classed, and generally regarded, in both the railroad industry generally and also in intervener's service, as "subordinate officials", and are not generally, or at all, regarded or classed or described as "yard service employes", within the established meaning of that term as used and understood in the railroad industry, or as the same appears in Section 3 (h) of the Railway Labor Act.

X.

Intervener denies each and all of the allegations of paragraph 10 of said complaint; in particular, intervener denies: (1) that said First Division of the National Railroad Adjustment Board now has, or ever has had, any lawful power or authority to establish its own jurisdiction over disputes involving railroad yardmasters, and (2) that the

National Mediation Board now has, or has ever had, any lawful power or authority, or has ever assumed or attempted to exercise any purported power or authority, to establish or determine that said First Division is vested with jurisdiction of disputes involving claims of yardmasters, either by the appointment of referees to hear and determine such yardmasters' disputes when docketed
115 with said First Division (as alleged in said paragraph 10 of the complaint), or otherwise.

XI.

Intervener denies each and all of the allegations of paragraph 11 of said complaint; and in this behalf, intervener alleges and shows that each of the plaintiffs, to the extent that they or either or any of them represent, either singly or collectively, any yardmasters employed by this intervener or by any other railroad carrier, is fully able to obtain a fair, ample, and lawful hearing and determination of each and every dispute and claim, arising out of the employment of or involving any such yardmaster, which is or may be subject to handling under the provisions of the Railway Labor Act and particularly Section 3 thereof, by presenting and submitting such claim or claims to the Fourth Division, National Railroad Adjustment Board.

Second Defense.

For a second and further defense to said complaint, and to the purported cause or causes of action therein, intervener shows and alleges:

I.

At all times material to this action intervener has been, and now is, a corporation, organized and existing under and by virtue of laws of the State of Kentucky, having its operating headquarters at San Francisco, California, and engaged in the operation of lines of railroad in interstate and foreign commerce. As such railroad common carrier, intervener is an "employer", within the meaning and definition of said term as set forth in Section 1, First, of the Railway Labor Act.

II.

At all of said times intervener has had, and now has, in its service upon its said railway lines a substantial number of employes classed as yardmasters, including assis-
116 tant yardmasters. Said yardmasters form and, in conformity with the general and accepted practice in the railroad industry, have been and are recognized by intervener as forming, a distinct craft or class of employes, which is wholly separate and apart from other recognized crafts or classes of employes, such as engineers, firemen, yardmen, or trainmen, which crafts similarly are also separately recognized by intervener, in conformity with general practice throughout the railroad industry.

Said craft or class of yardmasters in the employ of intervener is now, and at all times material to this action since and including September 17, 1937, has been duly represented, for all purposes of craft representation under the Railway Labor Act, by the Railroad Yardmasters of America, an unincorporated association. Said association is a standard railway labor organization, national in scope, within the meaning and intent of said term as used in the Railway Labor Act. As the representative of the craft of yardmasters upon intervener's lines, said association in its relations with intervener acts and has acted, by and through certain of its members designated as a general committee of said association for intervener's railroad lines. At all said times said general committee has had, and now has, a contract with intervener, styled and known as the "Yardmasters' Agreement, Southern Pacific Company, Pacific Lines", which was duly entered into in accordance with the provisions of the Railway Labor Act, and generally provides for the rates of pay, rules and working conditions of the members of said craft of yardmasters employed by intervener. A full, true and correct copy of said Yardmasters' Agreement curently in effect, and which became effective on August 1, 1941, is attached hereto as Exhibit "A", and by reference is made a part hereof.

III.

Yardmasters, including assistant yardmasters, have
117 at all times material to this action constituted a distinct and separate craft or class of employes for all purposes of representation and collective bargaining under

the Railway Labor Act. As heretofore set forth in paragraph IX of the first defense of this answer, the principal duties of railroad yardmasters, including assistant yardmasters, consist in the direction and supervision of train- and yard-service employes, while the latter are engaged in the performance of their various duties in and about such yards and terminals. The classes of employes particularly subject to the supervision and direction of such yardmasters include, in particular, engineers and firemen in both road and yard service, conductors and brakemen in road service, yard foremen, yard helpers, yardmen, and switch tenders, and other yard-service employes in yard service. A railroad yardmaster in the performance of his duties is required to and does exercise a substantial measure of individual initiative and responsibility; and yardmasters are therefore, in general railroad practice, classed and regarded, and upon intervener's lines in particular have been and are classed and regarded, as subordinate officials, and not as "yard-service employes", within the meaning of said term as regularly used in the railroad industry, or as said term appears in the Railway Labor Act.

IV.

Under the provisions of Section 3, Paragraph (h) of the Railway Labor Act, the First Division of the National Railroad Adjustment Board has jurisdiction over disputes involving train- and yard-service employes of carriers; that is, engineers, firemen, hostlers and outside hostler helpers, conductors, trainmen and yard-service employes. Said term "yard-service employes" includes, and is intended to include, only those employes in yard service whose duties and responsibilities are similar to those of engineers, firemen, conductors and trainmen in road train service; that is to say, yard engineers and firemen, 118 yard foremen (also known as "yard conductors"), yardmen (also known as "yard brakemen" or "helpers"), and switch tenders. Said term does not include, and is not intended to include, subordinate officials such as yardmasters, who, as aforesaid, exercise direction and supervision over such yard-service employes, as herein defined, in the performance of their duties.

It is not and never has been claimed that jurisdiction over disputes involving yardmasters is conferred upon either the Second or Third Divisions of said Board.

Since the Fourth Division of said Board is expressly given jurisdiction over disputes involving "all other employes of carriers over which jurisdiction is not given to the First, Second and Third Divisions", sole jurisdiction over all disputes and claims involving yardmasters which may be referred to said Board pursuant to the Railway Labor Act is conferred upon and resides in said Fourth Division.

V.

On July 11, 1938, this Court, in a proceeding then pending before it entitled "United States, ex rel, Railroad Yardmasters of America *vs.* National Railroad Adjustment Board, Fourth Division, et al.", which said proceeding was and is further identified upon the files and records of this Court as "Chancery No. 16031", duly rendered and entered its final decree and injunction, which said decree and injunction ever since has been and now is, in full force and effect, and has never been reversed, modified, or rescinded, wherein and whereby this Court found and concluded, among other things, that yardmasters are not included in any of the classes of employes over whose disputes jurisdiction is given by the Railway Labor Act to the First or Second or Third Divisions of the National Railroad Adjustment Board, and that neither of said last mentioned Divisions have jurisdiction of disputes involving yardmasters; that the Fourth Division of said Board has jurisdiction of said disputes; and that it was and is
119 the duty and jurisdiction of said Fourth Division, arising under the laws of the United States, to hear and determine such disputes involving yardmasters; and this Court further, in said cause, Chancery No. 16031, duly ordered, adjudged, and decreed that said Fourth Division be enjoined and commanded to take jurisdiction of, and to docket, hear, determine and enter awards on the merits in, three certain disputes theretofore filed with said Fourth Division by the aforesaid Railroad Yardmasters of America, acting on behalf of certain yardmasters employed by this intervener, and in which proceedings thus docketed with said Fourth Division this intervener was named as one of the parties to each such dispute. Thereafter, and on or about July 25, 1938, said Fourth Division, in obedience to said decree and injunction of this Court, duly and regularly made and entered its find-

ings and award in each such dispute, wherein and whereby, among other things, said Division found that as to each dispute it possessed jurisdiction thereof.

VI.

A plain, speedy and adequate remedy at law exists, whereby the plaintiffs and each of them may readily obtain the hearing, consideration and determination of each of the disputes involving yardmasters referred to in the complaint, and particularly in paragraphs 4 and 5 thereof, and of all other disputes of similar character in which said plaintiffs or either or any of them may desire such hearing and determination: namely, the presentation and filing of an appropriate petition in each such dispute with said Fourth Division, in manner and form as provided by the Railway Labor Act and the Rules of Procedure of said National Railroad Adjustment Board. Intervener is informed and believes, and therefore states it to be the fact, that plaintiffs and each of them have wholly failed and refused, and now continue to refuse, to avail themselves of said remedy, or to commence or carry for-
120 ward or otherwise to handle any proceedings with or before said Fourth Division, in disputes involving yardmasters.

Wherefore, intervener prays that this Court decree:

(1) That plaintiffs take nothing by their action;

(2) That plaintiffs are not entitled to any of the relief prayed for herein;

(3) That yardmasters are not "yard-service employes" within the meaning and intent of paragraph (h) of Section 3 of the Railway Labor Act;

(4) That the First Division of the National Railroad Adjustment Board therefore has no jurisdiction to hear, consider or determine disputes involving yardmasters, or arising out of their employment;

(5) That exclusive jurisdiction of such disputes involving yardmasters is vested in the Fourth Division of the National Railroad Adjustment Board;

(6) That the decree heretofore made and entered by this Court in Chancery No. 16031 is valid and binding; and must and should be so regarded by said First Division, and by each and all of the members thereof;

(7) That intervener have such other and further relief as may be proper in the premises.

208 So. LaSalle Street,
Chicago, Illinois.
Attorney for Southern Pacific Company, a corporation, Applicant-Intervener.

Henley C. Booth,
Burton Mason,
65 Market Street,
San Francisco, California,
Of Counsel.

122 And afterwards, to-wit, on the 10th day of April, 1942, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to-wit:

123 In the District Court of the United States.
* * (Caption—3788) * *

ORDER GRANTING LEAVE TO AMEND PETITION FOR DECLARATORY JUDGMENT AND ADD ADDITIONAL PARTIES DEFENDANT.

This cause coming on to be heard on Plaintiffs' motion for leave to make R. A. Walton, J. H. Blake, J. M. Fox, E. J. Hamner, F. A. Coile and E. Murrin additional parties defendant and for leave to file an amendment to the Petition for Declaratory Judgment herein, due notice having been given to counsel of record; and the Court being fully advised in the premises,

It Is Ordered:

1. That leave be, and is hereby, given to Plaintiffs to make the following named persons: R. R. Walton, J. H. Blake, J. M. Fox, E. J. Hamner, F. A. Coile, and E. Murrin, constituting the Fourth Division of the National Railroad Adjustment Board, additional parties defendant in the above entitled cause.

2. That Plaintiffs be, and they are hereby, granted leave to file instanter an amendment to the Petition for Declaratory Judgment heretofore filed by them.

Enter: Charles E. Woodward,
Judge.

Dated: April 10, 1942.

124 And on the same day, to-wit the 10th day of April, 1942, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Amendment to Petition for Declaratory Judgment, in words and figures following, to-wit:

125 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—3788) * *

AMENDMENT TO PETITION FOR DECLARATORY JUDGMENT.

The plaintiffs, The Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President and S. R. Harvey, Assistant President, for their Amendment to the Petition for Declaratory Judgment, allege:

1. That the opening paragraph of said Petition is revised to read as follows:

"The Plaintiffs, The Order of Railway Conductors of America, a voluntary unincorporated association, by H. W. Fraser, President, and F. H. Nemitz, Senior Vice President, and Brotherhood of Railroad Trainmen, a voluntary unincorporated association, by A. F. Whitney, President, and S. R. Harvey, Assistant President, represent unto the court that this Petition for a Declaratory Judgment and other relief, is filed on behalf of the members of said plaintiffs' railroad labor organizations against the First Division and the Fourth Division of the National Railroad Adjustment Board, and thereupon allege:"

126 2. That a new paragraph be added to said petition immediately following paragraph 2 thereof, which said paragraph shall be numbered paragraph 2a, and shall read as follows:

"2a. Some of the defendants are members of the Fourth

Division of the National Railroad Adjustment Board, said Board being heretofore described in paragraph 2 of said Petition. The membership of the said Fourth Division consists of six members, three of whom are selected and designated by the carriers and three of whom are selected and designated by the National Maritime Organizations of the employees; that said Fourth Division has jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the First, Second and Third Divisions. Said defendants are, and at all the times mentioned herein, were the duly appointed, qualified and acting members of said National Railroad Adjustment Board, Fourth Division, and individually and collectively hold said offices under and by virtue of the Act of Congress referred to in paragraph 2 of said Petition; and as members of said Division said defendants maintain headquarters and conduct hearings, hold meetings and sessions in said City of Chicago, State of Illinois, as required by said Act of Congress. Said defendants at all times herein mentioned and herein referred to are and have been the regular members of said National Railroad Adjustment Board, Fourth Division, duly appointed and qualified under and pursuant to sub-section (h) of said Section 3 of the Railway Labor Act."

V. Craven Shuttleworth,
Merchants National Bank Bldg.,
Cedar Rapids, Iowa.

W. A. Endle,
820 Superior Avenue,
Cleveland, Ohio.

Everett L. Gordon,
100 W. Monroe St.,
Chicago, Illinois.

Attorneys for Plaintiffs.

127 State of Illinois } ss.
County of Cook }

J. A. Zanger, being first duly sworn according to law, deposes and says that he is Vice President of the Brotherhood of Railroad Trainmen, one of the plaintiffs in the above entitled cause; that he is fully authorized to make this verification on behalf of said Brotherhood of Railroad Trainmen and does make the same on behalf of said plaintiff; that he has read the foregoing Amendment to the Petition for Declaratory Judgment heretofore filed in said cause and that he knows the contents thereof; that he has personal knowledge of the facts and things therein set forth and that the allegations contained therein are true.

Further affiant sayeth not.

J. A. Zanger.

Subscribed and sworn to before me this 9th day of April, A. D. 1942.

E. C. Klopf,
(Seal) *Notary Public.*

128 And afterwards on, to wit, the 16th day of April, 1942, came the defendants, E. W. Fowler, et al, by their attorneys and filed in the Clerk's office of said Court their certain Supplemental Answer, in words and figures following, to wit:

129 IN THE DISTRICT COURT OF THE UNITED STATES
(Caption—3788)

SUPPLEMENTAL ANSWER OF DEFENDANTS E. W. FOWLER, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD and L. O. MURDOCK.

Defendants E. W. Fowler, T. K. Faherty, R. A. Knoff, L. L. McDonald and L. O. Murdock, the Carrier Members, pleading in response to the amendment of April 10, 1942, filed by the plaintiffs, for their joint and several amended and supplemental answer to the complaint and petition on file in the above entitled case, and to the amendment to said petition herein filed under date of April 10, 1942, respectfully show:

I.

To correct a typographical omission, they amend paragraph II of their answer already filed by inserting following the words "of America" in the third line of the second subparagraph of said paragraph, being the eighth line on page 2 of said answer, the following words:

"Brotherhood of Railroad Trainmen, Switchmen's Union of North America."

II.

Answering the additional paragraph, paragraph 2a, of said complaint, as amended, these defendants admit that R. A. Walton, J. H. Blake, J. M. Fox, F. A. Coile, E. J. 130 Hamner and E. Murrin are members of and constitute the Fourth Division of the National Railroad Adjustment Board; that E. J. Hamner, F. A. Coile and E. Murrin, three of said members of said Fourth Division, are selected and designated by the carriers; that R. A. Walton, J. H. Blake and J. M. Fox are the labor members of said Fourth Division, each of whom has been duly selected and designated as a labor member of said Fourth Division pursuant to the provisions of the Railway Labor Act.

These answering defendants admit each and all other allegations of said paragraph 2a.

Sidney R. Prince, Jr.,
1728 Consumers Building,
Chicago, Illinois,
Attorney for Defendants, E. W. Fowler, R. A. Knoff, L. O. Murdock, L. L. McDonald and T. K. Faherty.

Sidney C. Murray,
Chicago, Illinois.
Of Counsel.

This certifies that I have this 16th day of April, 1942, served a copy of this answer upon Everett L. Gordon, Attorney for the Plaintiffs, and Leo J. Hassenauer, Attorney for Defendants F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis; and likewise upon Messrs. Poppenhusen, Johnston, Thompson & Raymond, appearing for the Railroad Yardmasters of America, interveners; Mr. John A. Sheean, Attorney for Southern Pacific Co., intervener, and upon Messrs. Winston, Strawn & Shaw, Attorneys for Great Northern Railway Company, intervener.

Sydney R. Prince, Jr.

132 And on the same day, to wit, the 22d day of April, 1942, came the Intervener, Great Northern Railway Company, by its attorneys and filed in the Clerk's office of said Court its certain Answer to Amendment to Petition.

133 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—3788) * *

ANSWER OF INTERVENER, GREAT NORTHERN RAILWAY COMPANY, TO AMENDMENT TO PETITION.

Intervener Great Northern Railway Company, for its answer to the amendment to the petition made by the plaintiffs pursuant to the Court's order of April 10, 1942, respectfully shows:

I.

Answering the additional paragraph numbered 2a of said complaint, this defendant admits that R. A. Walton, J. H. Blake, J. M. Fox, F. A. Coile, E. J. Hamner and E. Murrin are members of and constitute the Fourth Division of the National Railroad Adjustment Board; that E. J. Hamner, F. A. Coile and E. Murrin, three of said members of said Fourth Division, are selected and designated by the carriers; that R. A. Walton, J. H. Blake and J. M. Fox are the labor members of said Fourth Division, each of whom has been duly selected and designated as a labor member of said Fourth Division pursuant to the provisions of
134 the Railway Labor Act. This defendant admits each and all other allegations in said paragraph 2a.

Winston, Strawn & Shaw and
Bryce L. Hamilton,
First National Bank Building,
Chicago, Illinois,
Attorneys for Intervener, Great Northern Railway Company.

F. G. Dorety,
R. J. Hagman,
1120 Great Northern Building,
St. Paul, Minnesota,
Of Counsel.

136 And on the same day, to wit, the 8th day of May, 1942, came the Interven Southern Pacific Company, by its attorneys and filed in the Clerk's office of said Court its certain Supplemental Answer to Complaint as Amended April 10, 1942, in words and figures following, to wit:

137 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—3788) * *

SUPPLEMENTAL ANSWER OF SOUTHERN PACIFIC COMPANY, INTERVENER, TO COMPLAINT AS AMENDED APRIL 10, 1942.

Southern Pacific Company, the above named intervener, answering the complaint herein as amended pursuant to leave granted on April 10, 1942, admits, alleges and denies as follows:

Intervener admits the allegations of said amendment to said complaint, identified by plaintiffs as paragraph 2a thereof.

Intervener further refers to its answer in intervention, filed herein pursuant to leave of thi Court on March 9, 1942, and repeats the allegations, admissions and denials thereof, with the same force and effect as if here again set forth in full, and renews its prayer for judgment accordingly.

John A. Sheean,
208 South LaSalle Street,
Chicago Illinois,
Attorney for Southern Pacific Company, a corporation, Intervener.

Henley C. Booth,
Burton Mason,
65 Market Street,
San Francisco, California.
Of Counsel.

138 And afterwards on, to wit, the 10th day of June, 1942, came the E. J. Hamner, et al, by their attorneys and filed in the Clerk's office of said Court their certain Answer, in words and figures following, to wit:

139 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—3788) * *

ANSWER OF THE DEFENDANTS E. J. HAMNER, F. A. COILE AND E. MURRIN.

The joint and several answer of defendants E. J. Hamner, F. A. Coile and E. Murrin, the Carrier Members of the Fourth Division of the National Railroad Adjustment Board, respectfully shows:

1. They adopt as their own the Answer, Further Answer and Counter-Claim of the Carrier Members of the First Division of the National Railroad Adjustment Board, which was refiled by the latter on April 16, 1942, following the amendment of the complaint herein.

E. J. Hamner,
F. A. Coile,
E. Murrin.

June 10, 1942.
John Knox,
Sydney R. Prince, Jr.,
Attorneys for Messrs. E. J. Hamner, F. A. Coile and E. Murrin,
10 S. LaSalle Street,
Chicago, Illinois.
Of Counsel.

This certifies that I have this 10th day of June, 1942, served a copy of this answer upon Everett L. Gordon, Attorney for the Plaintiffs, and Leo J. Hassenauer, At-
140 torney for Defendants F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis; and likewise upon Messrs. Poppenhusen, Johnston, Thompson & Raymond, appearing for the Railroad Yardmasters of America, interveners; Mr. John A. Sheean, Attorney for Southern Pacific Co., intervener, and upon Messrs. Winston, Strawn & Shaw, Attorneys for Great Northern Railway Company, intervener.

Sydney R. Prince, Jr.

141 And afterwards on, to wit, the 30th day of October, 1942, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Reply to Counterclaim of The Railroad Yardmasters of America, Intervener, in words and figures following, to wit:

142 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—3788) * *

REPLY TO COUNTERCLAIM OF THE RAILROAD YARDMASTERS OF AMERICA, INTERVENER,

Now come the plaintiffs in the above entitled cause and by way of reply to the counterclaim of the Yardmasters of America, intervener herein, state and allege as follows:

1. Plaintiffs admit that the Railroad Yardmasters of America is a voluntary unincorporated association, as alleged in paragraph 1 of said counterclaim, and deny each and every other allegation of said paragraph.

2. Plaintiffs admit the allegations of paragraph 2 of said counterclaim.

3. Plaintiffs deny each and every allegation in paragraph 3 of said counterclaim.

4. Plaintiffs admit that a decree was entered in cause No. 16031 in this Court and that Exhibit "A" attached to intervener's counterclaim is a true and correct copy thereof, but deny each and every other allegation of said paragraph 4, and further specifically deny that said decree, Exhibit "A," is in any manner binding upon these plaintiffs.

143 And for a further defense plaintiffs state that they were not parties to the suit in which said decree was entered and had no knowledge of said suit and that the decree and the findings contained therein are not res adjudicata of the issues in this cause as to the plaintiff herein or either of them.

5. Plaintiffs deny each and every allegation in paragraph 5.

6. Plaintiffs admit the allegations contained in paragraph 6.

7. Plaintiffs admit the allegations contained in paragraph 7.

8. Plaintiffs deny the allegations contained in paragraph 8.

Wherefore, plaintiffs pray that intervener's counterclaim be dismissed and plaintiffs have the relief prayed for in its original petition filed herein. And plaintiffs further pray that this Court, by declaratory judgment, declare and adjudge that the First Division of the National Railroad Adjustment Board has sole and exclusive jurisdiction to hear, docket and entertain and enter awards on disputes involving Yardmasters, as set forth in the Petition for Declaratory Judgment which have heretofore been referred to the First Division of said Board, under the terms of the Railway Labor Act and which remain undetermined and all other disputes involving yardmasters which may hereafter be referred to said First Division of the National Railroad Adjustment Board.

The Order of Railway Conductors of America,
H. W. Fraser, *President*, and F. H. Nemitz,
Senior Vice President; and
Brotherhood of Railroad Trainmen,
A. F. Whitney, *President*, and S. R. Harvey,
Assistant President, Plaintiffs.
By Everett L. Gordon,
Their duly authorized
agent in this behalf.

144 State of Illinois } ss.
County of Cook }

Everett L. Gordon, being first duly sworn on oath, deposes and says that he is the duly authorized agent in this behalf of the Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President, plaintiffs in the above entitled cause; that he has read the foregoing reply of said plaintiffs to the counterclaim of the Railroad Yardmasters of America, intervener, and knows the contents thereof; that he has knowledge of the facts and that matters and things therein set forth are true to the best of his knowledge, information and belief.

Further affiant sayeth not.

Everett L. Gordon.

Subscribed and sworn to before me this 29th day of October, A. D. 1942.

Joseph J. Loverde,
Notary Public.

145 And on the same day, to wit, the 30th day of October, 1942, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Reply to Answer and Counterclaim of Defendants E. W. Fowler, et al, in words and figures following, to wit:

146 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—3788) * *

REPLY TO ANSWER AND COUNTERCLAIM OF DEFENDANTS, E. W. FOWLER, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD AND L. O. MURDOCK.

Now come the plaintiffs in the above entitled cause and by way of reply to the answer and counterclaim of defendants E. W. Fowler, T. K. Faherty, R. A. Knoff, L. L. McDonald and L. O. Murdock, and state and allege as follows:

1. Plaintiffs herein, in answer to the answer and counterclaim of these defendants state and allege that this Court should dismiss paragraph 12 of said answer and counterclaim as not being an appropriate pleading by incorporating the preceding eleven paragraphs of its answer for the reason that paragraph 12 of said answer and counterclaim does not set forth any new matter upon which this Court could grant the relief as prayed for in said counterclaim.

2. The plaintiffs deny the allegations set forth in paragraph 13 of said answer and counterclaim and further state and allege that such proceedings, if any, which may have been before the Fourth Division of the National Railroad Adjustment Board, are in no manner binding upon these plaintiffs.

147 Wherefore, plaintiffs pray that said defendants' answer and counterclaim be dismissed and plaintiffs have the relief prayed for in its original petition filed herein. And plaintiffs further pray that this Court, by declaratory judgment, declare and adjudge that the First Division of the National Railroad Adjustment Board has sole and exclusive jurisdiction to hear, docket and entertain and enter awards on disputes involving Yardmasters, as set forth in the Petition for Declaratory Judgment, which have heretofore been referred to the First Division of said Board, under the terms of the Railway Labor Act and

which remain undetermined and all other disputes involving yardmasters which may hereafter be referred to said First Division of the National Railroad Adjustment Board.

The Order of Railway Conductors of America,
H. W. Fraser, *President*, and F. H. Nemitz,
Senior Vice President; and
Brotherhood of Railroad Trainmen,
A. F. Whitney, *President*, and S. R. Harvey,
Assistant President, Plaintiffs.
By Everett L. Gordon,
Their duly authorized agent in this behalf.

148 And afterwards on, to wit, the 6th day of August, 1943, came the parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation of Facts, in words and figures following, to wit:

149 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—3788) • •

STIPULATION

1. The parties to this cause, by their respective attorneys, hereby stipulate that the statements and conclusions of fact herein set forth shall, for the purpose of
150 determining the issues involved in this cause and for no other purpose, be deemed and considered to be true and correct, and that all matters herein set forth, together with the facts admitted to be true in the pleadings herein, shall be received by the Court as having been duly established and proved, except as objection to the competence, materiality, or relevance of any matter herein set forth shall be made by any party hereto, such right so to object being hereby reserved to each of the said parties. Each party also reserves the right to offer and introduce at the trial evidence on his own behalf in addition to the evidence agreed upon in this stipulation.

2. It is further stipulated that any award of a Division of the National Railroad Adjustment Board or any submission by a party to a proceeding before any such Division or any portion of such award or submission shall, by reference to and identification of such award or submission

or portion thereof at the trial of this cause, become and be a part of the record herein for all purposes and with the same force and effect as if the same were physically embraced in the record, subject to objection on the ground of competence, materiality, or relevance.

3. The plaintiffs claim that this is a suit of a civil nature arising under the Constitution and laws of the United
151 States, more particularly under the Act of Congress of May 20, 1926, as amended June 21, 1934, 45 U. S. C., Secs. 151-163, known as the Railway Labor Act, and the laws of the United States relating to interstate commerce, and that it is instituted pursuant to the provisions of said statutes and Section 247d(1) of the Judicial Code, 28 U.S.C., Sec. 400(1), and also under the general equity jurisdiction of this Court, by reason whereof this Court has jurisdiction of this suit. It is agreed by all the parties to this stipulation that the pleadings raise no jurisdictional issue.

Agreed Statement of Facts.

4. Plaintiff The Order of Railway Conductors of America is a voluntary, unincorporated association of railroad employees, national in scope, with headquarters, general offices and post-office address at Cedar Rapids, Iowa; plaintiff H. W. Fraser is the duly elected, qualified, and acting president of said association, and plaintiff F. H. Nemitz is its duly elected, qualified, and acting senior vice president.

5. Plaintiff Brotherhood of Railroad Trainmen is a voluntary, unincorporated association of railroad employees, national in scope, with headquarters, general offices and post-office address at Cleveland, Ohio; plaintiff A. F. Whitney is the duly elected, qualified, and acting president of said association, and plaintiff S. R. Harvey is its duly elected, qualified, and acting assistant president.

6. The defendants E. W. Fowler, T. K. Flaherty, R. A. Knoff, L. L. McDonald and L. O. Murdock are the duly qualified and acting members of the First Division of
152 the National Railroad Adjustment Board, selected and designated by the carriers (as that term is defined in the Railway Labor Act, 45 U.S.C., Sec. 151); the defendants F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis are the duly qualified and acting members of the said First Division, selected and designated by certain national labor organizations of employees

of carriers. F. J. Williams is a member and officer of the Order of Railway Conductors of America, William Bishop a member and officer of the Brotherhood of Railroad Trainmen, Paul M. Carter a member and officer of the Switchmen's Union of North America, R. E. Edrington a member and officer of the Brotherhood of Locomotive Engineers, and Fred Lewis a member and officer of the Brotherhood of Locomotive Firemen and Enginemen.

7. The defendants E. J. Hamner, F. A. Coile and E. Murrin are the duly qualified and acting members of the Fourth Division of the National Railroad Adjustment Board, selected and designated by the carriers; the defendants R. A. Walton, J. H. Blake and J. M. Fox are duly qualified and acting members of the said Fourth Division, selected and designated by certain national labor organizations of employees of carriers. R. A. Walton is a member and officer of the International Longshoremen's Association, J. H. Blake a member and officer of the National Marine Engineers' Beneficial Association, and J. M. Fox a member and officer of the Inland Boatmen's Union of the Pacific.

8. The intervenor herein, Railroad Yardmasters of America, is a voluntary, unincorporated association of railroad employees, national in scope, with headquarters, general offices and post-office address at Columbus, Ohio.

153 9. The intervenor herein, Great Northern Railway Company, a corporation having its principal office in St. Paul, Minnesota, is a carrier.

10. The intervenor herein, Southern Pacific Company (Pacific Lines), a corporation having its principal office in San Francisco, California, is a carrier.

11. On March 15, 1938, the Railroad Yardmasters of America submitted to the Fourth Division of the National Railroad Adjustment Board a claim of R. V. Murphy against his employer, Southern Pacific Company (Pacific Lines), growing out of an alleged violation of said employee's rights as a yardmaster. On the same date the Railroad Yardmasters of America also submitted to the said Fourth Division a claim of J. Besant and a claim of E. F. Wheeler, each claim growing out of an alleged violation by the employer, the Southern Pacific Company (Pacific Lines), of the claimant's rights as a yardmaster. On March 24, 1938, the secretary of the Fourth Division, pur-

suant to the instruction of the members of said Division, informed the president of the Railroad Yardmasters of America and the chief operating officer of the Southern Pacific Company (Pacific Lines) that the members of the Fourth Division had deadlocked on the question of assuming jurisdiction to hear and render awards in the aforesaid three cases.

12. On April 13, 1938, the Railroad Yardmasters of America and the aforesaid Murphy, Besant and Wheeler filed a petition for mandamus or mandatory injunction against the members of the Fourth Division of the National Railroad Adjustment Board and the secretary of said Division in the District Court of the United States for
154 the Northern District of Illinois, Eastern Division, the number of the cause being 16031, in chancery. A true and correct copy of certain pleadings in said cause, petitioners' motion that the petition for injunction be taken as confessed, and the final decree entered therein on July 11, 1938, is attached hereto as Exhibit 1. Said final decree commanded the members of the Fourth Division to hear and render awards in the aforesaid cases of Murphy, Besant and Wheeler.

13. On August 13, 1938, the Order of Railway Conductors of America and the Great Northern Railway Company joined in the submission to the Fourth Division of the National Railroad Adjustment Board of the claims of two employees of the said carrier, V. E. Benjamin and M. L. Nagle, growing out of alleged violations by the employer of the said employees' rights as yardmasters. Said joint submission was accepted by the Fourth Division on August 18, 1938. On August 25, 1938, the Order of Railway Conductors of America wrote and sent to the Great Northern Railway Company a letter formally requesting that the carrier withdraw any papers it may have sent to the Fourth Division in connection with said submission and join the Order of Railway Conductors of America in a submission of the claims of Benjamin and Nagle to the First Division of the National Railroad Adjustment Board. A true and correct copy of said letter is attached hereto as Exhibit 2. The Great Northern Railway Company replied to said letter on August 30, 1938, declining to agree to a submission of the claims of Benjamin and Nagle to the First Division.

A true and correct copy of said letter of reply is at-
155 tached hereto as Exhibit 3. On September 1, 1938, the Order of Railway Conductors of America notified the Fourth Division that it was withdrawing its submission of the claims of Benjamin and Nagle to that Division, and on September 2, 1938, the secretary of the Fourth Division referred said notice of withdrawal to the Great Northern Railway Company. True and correct copies of said notice of withdrawal and said letter of reference are attached hereto as Exhibits 4 and 5, respectively. On September 3, 1938, the carrier informed the Fourth Division by letter that it had no objection to the withdrawal of the Order of Railway Conductors of America, since that organization was the complainant in the case. A true and correct copy of said letter is attached hereto as Exhibit 6. On September 12, 1938, the Fourth Division granted the request for withdrawal and closed the docket.

14. On October 11, 1938, the Order of Railway Conductors of America made an ex parte submission of the aforesaid claims of Benjamin and Nagle to the First Division of the National Railroad Adjustment Board, and said submission was docketed on October 24, 1938, as number 6404 in the official records of said First Division. On October 21, 1938, the Great Northern Railway Company filed in the same docket its ex parte submission denying the jurisdiction of the First Division over the subject-matter of said claims. The aforesaid claims of Benjamin and Nagle, prior to being submitted as aforesaid to the First Division of the National Railroad Adjustment Board, had been handled in the usual manner up to and including the chief operating officer of the Great Northern Railway Company designated
to handle such disputes. Such handling had been com-
156 pleted, and nothing on the date of reference to the said First Division remained to be done in order to complete handling in the usual manner up to and including such chief operating officer.

15. On January 4, 1941, the Brotherhood of Railroad Trainmen made an ex parte submission to the First Division of the National Railroad Adjustment Board of a claim of W. W. May, an employee of the Southern Pacific Company (Pacific Lines), growing out of an alleged violation by the employer of the employee's rights as a yardmaster. This submission was docketed on March 26, 1941, as number 12295 in the official records of the said First Division.

On March 24, 1941, the Southern Pacific Company (Pacific Lines) filed its ex parte submission in the same docket, denying the jurisdiction of the First Division over the subject-matter of said claim. The aforesaid claim of W. W. May, prior to submission by the Brotherhood of Railroad Trainmen to the First Division of the National Railroad Adjustment Board, had been handled in the usual manner up to and including the chief operating officer of the Southern Pacific Company (Pacific Lines) designated to handle such disputes. Such handling had been completed, and nothing on the date of reference to said First Division remained to be done in order to complete handling in the usual manner up to and including such chief operating officer.

16. On August 28, 1941, the carrier members of the First Division of the National Railroad Adjustment Board wrote and sent to the labor members of said Division a letter stating that the carrier members would not participate in the hearing of certain disputes then docketed in the First Division, on the ground that such disputes involved 157 yardmasters and were therefore not within the jurisdiction of the First Division, and proposing that said disputes and similar disputes arising in future be docketed with the Fourth Division of the National Railroad Adjustment Board. The carrier members referred in their letter to the final decree entered on July 11, 1938, in the case heretofore mentioned in paragraph 12, in which the Fourth Division had been ordered to hear and render awards in the three disputes heretofore mentioned in paragraph 11. A true and correct copy of said letter of August 28, 1941, is attached hereto as Exhibit 7. The cases referred to in said letter, in which the carrier members declined to participate, were those docketed in the First Division of the National Railroad Adjustment Board as numbers 6404, 10665, 11801, 12101, 12277, 12278, 12280, 12294 and 12295, the number 6404 being the submission of the claims of Benjamin and Nagle heretofore mentioned in paragraph 14 and the number 12295 being the submission of the claim of W. W. May heretofore mentioned in paragraph 15. The carrier members of the First Division still refuse to participate in the consideration of the cases mentioned in their letter of August 28, 1941, and said disputes remain for that reason unadjusted by the First Division. Since August 28, 1941, the carrier members of the First Division have in-

formed the labor members of the said Division of their conclusion that still other disputes docketed with the First Division are not within its jurisdiction and of their determination not to participate in any consideration of the merits of such disputes, on the ground that the disputes involve yardmasters. Said disputes bear docket numbers in the First Division as follows: 4535, 4536, 6406, 6644, 6837, 8970, 10109, 13318. By reason of the refusal 158 of the carrier members of the First Division to participate in the cases last mentioned, they also remain unadjusted by the First Division.

17. Subsequent to the rendition of the decree in Chancery No. 16031, referred to in paragraph 12 above, the First Division of the National Railroad Adjustment Board took jurisdiction, held hearings, and rendered awards in the following cases:

(a) On March 6, 1939, the First Division of the National Railroad Adjustment Board rendered its Award 3609, in Docket 5994, Brotherhood of Railroad Trainmen *vs.* Baltimore & Ohio Ry. Co. A true and correct copy of the claims, findings, and award made in said case, as officially published by the National Railroad Adjustment Board, First Division, is attached as Exhibit D to the petition of the plaintiffs heretofore filed in this case.

(b) On August , 1939, the First Division of the National Railroad Adjustment Board rendered its Award 4077, in Docket 6960, Brotherhood of Railroad Trainmen *vs.* Southern Pacific Co. (Pacific Lines). A true and correct copy of the claims, findings, and award made in said case, as officially published by the National Railroad Adjustment Board, First Division, is attached as Exhibit E to the petition of the plaintiffs heretofore filed in this case.

(c) On August 24, 1939, the First Division of the National Railroad Adjustment Board rendered its Award 4150, in Docket 6549, Brotherhood of Railroad Trainmen *vs.* Northern Pacific Terminal Co. of Oregon. A true and correct copy of the claims, findings, and award made in said case, as officially published by the National Railroad Adjustment Board, First Division, is attached as Exhibit F to the petition of the plaintiffs heretofore filed in this case.

18. Yardmasters employed by rail carriers are represented by labor organizations as follows:

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	Number of Carriers	Represented Mileage	% of Represented Mileage	% of Total Railroad Mileage
Railroad Yardmasters of America	30	119,705	60%	52%
Brotherhood of Railroad Trainmen	11	29,746	15%	13%
System associations	11	15,111	7.5%	7%
Order of Railway Conductors	9	13,715	7%	6%
Railroad Yardmasters of North America	7	10,748	5%	5%
American Railway Supervisors' Association	2	9,190	4.5%	4%
Switchmen's Union of North America	2	2,287	1%	1%
	76	200,502	100%	88%

19. A railroad yard is a system of tracks within defined limits, over which movements of engines and cars not authorized by timetable or train order may be made, subject to prescribed signals and rules or special instructions. A yard engine is an engine assigned to yard service and working within yard limits. The work performed in a yard includes switching, making and breaking up trains, storing cars, moving trains into, out of, and through the yard, inspecting cars and freight, repairing cars, maintaining track and other fixed equipment, sending and receiving messages by telephone and telegraph, keeping records, and making reports. The employees who perform such work include those known as yardmen, that is, switch or yard foremen, yard helpers, and switchtenders, and employees in train and engine service, such as engineers, firemen, hostlers, conductors, brakemen, flagmen, and baggagemen; they also include clerks, telephone and telegraph operators in yard offices, towermen operating interlocking switches, maintenance-of-way foremen and laborers, signal department forces engaged in the maintenance of yard signal plants, and car inspectors and repairers. All such yardmen and other employees performing work in a yard are directed and supervised in their work by a yardmaster, with the aid, if necessary, of one or more assistant yardmasters,
160 Yardmasters do not and may not perform the work of yardmen and employees in train and engine service; they may perform some clerical work, if their entire time is not taken up with the direction and supervision of yardmen and other employees working in yards.

20. The duties of yardmasters include the following:

(a) In general, yardmasters run the yards, of which they

are in charge, and they are responsible for conditions within the same. Necessarily, they exercise a substantial measure of individual initiative and responsibility.

(b) The duties of yardmasters vary at different terminals, because of the nature and quantity of the traffic passing through or assembled, distributed, and interchanged at different terminals. Depending upon the size and nature of the yard, the yardmaster's duties may be performed by him in person or they may be exercised under his supervision by as many as fifty or more subordinate employees. The yardmaster is responsible for all work necessary in the running of the yard, in the sense that he must see that such work is done and is done properly, whether the work is yard service, train and engine service, clerical service, communication service maintenance service, repair service, or in some cases, dealing with patrons in the matter of shipments arriving at, passing through, or departing from the yard. A yardmaster, however, is not permitted actually to perform the work of certain classes of employees under his supervision, such as passing signals, riding cars to a stop, and throwing switches. His duties with respect to the physical movement of trains and engines, maintenance, and repair are purely supervisory.

161 (c) Yardmasters report to and receive instructions from the general yardmaster, the trainmaster, and such other superior officers as may require information on the operation of yards and industrial districts assigned thereto. Yardmasters must also comply with instructions from the chief train dispatcher and from stationmasters and agents in matters pertaining to station work. They must maintain records and furnish reports, as required, and see that such records and reports are in accordance with instructions. Yardmasters keep directly in touch with subordinate heads of the mechanical and car departments, with regard to the use of locomotives, the inspection of trains, engines, and cars, and the repair of loaded cars cut out of trains.

(d) The yardmaster has direct supervision over employees engaged in making up, breaking up, and switching trains within yards and industrial districts assigned thereto; also direct supervision over employees who perform work incidental to the operation of the yard. The employees under the yardmaster's supervision include yard or engine foremen, yard helpers, switchtenders, engineers, firemen, brakemen, hostlers, hostler helpers, conductors, office clerks,

telephone and telegraph operators, towermen, signalmen, car inspectors and repairers, track maintenance foremen and laborers, car retarder operators, car checkers, yard checkers, and weighmasters.

(e) The yardmaster must see that all official orders and notices are posted on the bulletin board. He allocates the work to be performed by the employees under his supervision, marking up assignments, calls, etc., on the board, in accordance with schedule requirements. He checks
162 the time of such employees and certifies as to its correctness. The yardmaster must see that no more engines and men are used than are actually required, must decide when engines and men should be cut off or added, and consults with his superiors about the employment of additional forces. He must see that trainmen report for duty at the appointed time. He is responsible for the proper conduct of the employees under his supervision and must see that they are in fit condition to perform their work. The yardmaster must familiarize himself with the rules governing the employees in his charge and must require safe, prompt, and efficient discharge of their duties. He reports to the superintendent of transportation any disobeyance of rules or other misconduct on the part of any employe which may come under his notice.

(f) The yardmaster has charge of the movement of trains and engines in the yard. He directs the make-up and break-up of trains and the distribution of cars. He keeps directly in touch with the chief train dispatcher and with yardmasters at other terminals with regard to train movements and the handling of crews. He must know the geography of the system and the routes of traffic between different divisions of the system. The yardmaster designates track assignments for the reception or make-up of trains and gives notice to all concerned, such as roundhouse forces, inspectors, etc., as to trains ordered. He must take an inventory of all cars in the yard as often as necessary to insure prompt movement and must prepare all necessary reports, lists, etc., or see that the same are prepared, pertaining to handling of cars in the yard.

163 (g) The yardmaster must see that cars are not unnecessarily delayed in the yards, that cars to be transferred, or the lading of which is to be transferred, are promptly placed, and that high-class trains are put through the yard with the least possible delay.

(h) The yardmaster must see that trains are made up and taken out at the designated times. He must familiarize himself with instructions on refrigeration, ventilation, and the protection of perishable freight. He gives notice to all concerned as to cars to be cleaned, iced, heated, ventilated, etc. He designates detour routes through the yard when switches are run through or cars are derailed and when emergencies arise involving unsafe tracks. He is responsible for the proper placement of cars at industrial plants, freight houses, and other company facilities.

(i) The yardmaster must see that conductors are furnished with waybills or other authority for the movement of the cars in their trains. He must secure disposition to be made of cars arriving without proper waybills or orders for further movement.

(j) The yardmaster determines the make-up of outbound trains, and in doing so must observe the governing rules promulgated by his employer and the Interstate Commerce Commission. He must see that trains have the required tonnage and that the engine for a train is ready at the appointed time.

(k) The yardmaster is responsible for the fulfillment of all requirements as to movement, switching, and protection of cars and freight contained therein. He must see that trains are made up in the order designated, and that
164 freight assigned to a particular train is forwarded by that train.

(l) The yardmaster is responsible for the careful handling of cars within the yard. He must see that no unnecessary noise is made by engines, cars, and employees, giving particular attention to work in connection with or near cars occupied by passengers. He must give notice to all concerned as to track conditions when switches are run through or cars are derailed or when emergencies arise involving unsafe tracks.

(m) The yardmaster makes arrangements with and gives information to shippers and consignees regarding the switching of cars, the supply of cars for outbound loading, and the delivery of inbound carload shipments.

(n) The yardmaster must see that opportunity is given for proper inspection of cars and that such inspection is made. He must see that proper slips or waybills accompany each loaded car and, when so ordered, each empty car, and that waybills are received for cars arriving. He

must keep a record of all trains and cars, noting any irregularities and seeing that reports of the same are made to the proper officers. He must report all cars arriving without proper waybills and cars whose freight is received in damaged condition or is improperly loaded. Unless otherwise instructed, the yardmaster must keep a record of the seals on each car arriving at or departing from the yard, giving date, train number, initials, and car number. He must see that the doors of loaded cars are properly secured and sealed, that the doors of empty cars are closed and secured, and, when the doors swing outward on hinges,
165 that such doors are sealed. If a loaded car is found not to be properly sealed, the yardmaster must have the contents promptly examined and must seal the car and make prompt report to the superintendent.

(o) The yardmaster must see that cars requiring repair are promptly placed on the repair track or are sent to the shops, as the case may require, and must notify the men who are to move the car that it is in bad order, so that they will exercise care in handling it in order to prevent injury to themselves and additional damage to the car.

21. The Consolidated Code of Transportation Rules and General Instructions (edition of 1939) issued by the intervening defendant, Great Northern Railway Company, for the government of its employees, defines the terms yard and yard engine (page 8) as follows:

"Yard.—A system of tracks within defined limits provided for the making up of trains, storing of cars and other purposes, over which movements not authorized by timetable, or by train order, may be made, subject to prescribed signals and rules, or special instructions.

"Yard Engine.—And engine assigned to yard service and working within yard limits."

The following rules and regulations governing yardmasters are found in the aforesaid publication (page 121):

"Yardmasters.

"840. At stations where a yardmaster is employed, the general direction and government of the yard is in his charge, and all persons employed in yard service must obey his instructions.

"They must see that cars are carefully handled and no unnecessary noise made by engines or employes, giving particular attention to the work in connection with or near

sleeping cars in service and see that the occupants are not unnecessarily disturbed.

"841. Yardmasters are responsible for the proper make-up and movement of trains through yards, the prompt handling of cars and the requirements as to the diversion, refrigeration, ventilation and heating, and for the proper position and security of all yard switches. Main track switches, except when in use, must be locked for the main track."

166 Other duties to be performed by yardmasters are set forth in a book of rules and regulations published by said carrier for the government of employees in its operating department, as follows:

"970. Yardmasters report directly to Agents and obey instructions of Superintendent, Assistant Superintendents, Trainmasters and Chief Dispatchers.

"971. They have charge of yards, of the men employed, the handling of trains and the movement of cars therein.

"972. It is their duty to see that the trainmen, enginemen and engines are ready for duty at the appointed times; that trains are properly made up (see Rule 872), inspected and ready to leave on time and that doors of cars are properly secured.

"973. They must see that cars are not unnecessarily delayed in yards; that they are inspected and those needing heavy repairs are promptly sent to the shops or placed on repair tracks.

"974. They must see that all tracks are switched promptly and regularly; that transfer tracks with foreign lines are worked at the agreed upon times; that deliveries to industry, team and private tracks are made without delay and that repair and shop tracks are switched daily at the appointed times.

"They must insist on air hose being parted by hand and never permit them to be pulled apart.

"975. They must not permit a train to start or yard engine to move with an engineman, conductor, yard foreman, or a brakeman connected with it who is under the influence of liquor or unfit for duty. They must report such cases promptly to the Agent and Superintendent.

"976. They must be familiar with the rules governing men in train service and the duties of all employes connected with freight trains; must require the efficient discharge of such duties while in their yards and report violations of the rules coming to their notice.

"977. They will be held responsible for the proper position of switches. Main line switches in yards must be set and locked for main track except when in actual use. Inside switches except those on passing tracks may be left as used.

"978. They must see that all bulletins and other official notices are posted on the bulletin board and that the necessary reports required of them are made promptly."

167 22. The Rules and Regulations published by the intervening defendant, Southern Pacific Company (Pacific Lines), for the government of employees in its transportation department define the terms yard and yard engine (page 7) as follows:

"Yard.—A system of tracks within defined limits provided for the making up of trains, storing of cars and other purposes, over which movements not authorized by timetable, or by train order, may be made, subject to prescribed signals and rules, or special instructions.

"Yard Engine.—An engine assigned to yard service and working within yard limits."

The aforesaid publication prescribes the following rules for yardmasters (page 138):

"842. Yardmasters are responsible for conditions within yards. Trains and engines will be under the control of the yardmaster, and all employees in train, engine or yard service will be subject to his direction as to movements within yard limits. Road crews of trains entering yards will be responsible for their respective trains and engines until the yardmaster or his representative takes charge.

"Yardmasters will keep advised of important trains, such as stock, fruit and manifest, and make every effort to get them through the yard with the least possible delay. They must see that cars loaded with explosives and inflammable material are placed in the train the prescribed distance from the engine and caboose. Freight assigned to particular trains must be forwarded in such trains. In the absence of other instructions trains may be filled with non-manifest in order of its importance.

"843. The general direction and government of a train is vested in the conductor, and all other persons employed on the train will obey his instructions. Should there be any doubt as to authority or safety of proceeding he will consult the engineer, who will be responsible with him for the safety and the proper handling of the train and such use of signals and other precautions as circumstances may

require. He must obey the instructions of yardmasters within yard limits and be governed by the direction of agents in doing work at stations, and conform to the instructions issued by the Traffic and Accounting Departments."

23. In the 76th Congress, 3d Session, a bill (S. 4375) was introduced on September 23, 1940, by Senator 168 Smith, at the request of the American Short Line Railroad Association, entitled "A bill to amend the Railway Labor Act approved May 20, 1926, as amended June 21, 1934, and for other purposes," and containing the following provisions:

"(9) (a) The first division of the Adjustment Board shall have jurisdiction over disputes involving train-and-yard-service employees of carriers, including engineers, firemen, hostlers, outside hostler helpers, conductors, trainmen and yard-service employees, except yardmasters and other subordinate officers.

• • • • •

"(d) The fourth division of the Adjustment Board shall have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions."

Said bill, after two readings on the day of its introduction, was referred to the Senate Committee on Interstate Commerce, where it remained until the expiration of the 76th Congress without having been reported back to the Senate.

24. In the 77th Congress, 1st Session, a bill (S. 1660) was introduced on June 26, 1941, by Senator Smith, at the request of the American Short Line Railroad Association, entitled "A bill to amend the Railway Labor Act, approved May 20, 1926, as amended June 21, 1934, and for other purposes," and containing the following provisions:

"(5) The Board shall be composed of four Divisions, whose awards shall be independent of one another.

"(a) The first Division of the Board shall have jurisdiction over disputes involving train-and-yard-service employees of carriers, including engineers, firemen, hostlers, outside hostler helpers, conductors, trainmen, and yard-service employees, except yardmasters and other subordinate officers.

• • • • •

169 "(d) The fourth Division of the Board shall have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and over disputes involving employees of carriers over which jurisdiction is not given to the first, second, and third divisions."

Said bill, after two readings on the day of its introduction, was referred to the Senate Committee on Interstate Commerce, where it remained until the expiration of the 77th Congress without having been reported back to the Senate.

The foregoing stipulation made and entered into this 8th day of July, 1942.

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170 EXHIBIT 1.

171 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—1603) • •

PETITION FOR MANDAMUS OR MANDATORY INJUNCTION.

Now come the petitioners and in support of their petition show the Court that—

1. By the terms of the Railway Labor Act as amended by Act of Congress June 21, 1934 (45 U.S.C.A. Section 153 (3)), there is created a quasi judicial or administrative Federal Board known as the National Railroad Adjustment Board, and by said Act it is further provided:

"'(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

'First division: To have jurisdiction over disputes involving train-and-yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

172 'Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, powerhouse employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

'Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by

the carriers and five by the national labor organizations of employees.

'Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.' "

2. The above named individual respondents are members of the Fourth Division of said National Railroad Adjustment Board so created and established, which said Board and the respective divisions thereof have and maintain headquarters and conduct their hearings in the City of Chicago, Illinois.

(3) The petitioners, R. V. Murphy, J. Besant and E. E. Wheeler are and were at all the times herein mentioned, members of the Railroad Yardmasters of America, a national labor organization of the employees of carriers, as the term is used in said Railway Labor Act, and were employed as yardmasters by the railroad carrier engaged in interstate commerce which is referred to in the exhibits mentioned hereafter and made a part hereof as therein
173 alleged; that yardmasters are not included in any of the classes of employees over whose disputes jurisdiction is by said Act given to the First, Second or Third Divisions, respectively, of said National Railroad Adjustment Board.

4. On March 21, 1938, the petitioner, Railroad Yardmasters of America, acting for and on behalf of the said R. B. Murphy, J. Besant and E. E. Wheeler, filed with the said Fourth Division of the National Railroad Adjustment Board an ex parte submission of disputes which had theretofore arisen between said respective petitioners and said carrier by whom they were employed as yardmasters, copies of which said ex parte submissions and statements of grievances are attached hereto and by reference made a part hereof as Exhibits "A," "B" and "C." Thereafter, on March 24, 1938, the said Fourth Division of the National Railroad Adjustment Board failed and refused to hear and adjudicate the said three ex parte submissions or cases and with respect thereto adopted and entered of record in their proceedings the following memorandum or resolution:

"In reference to the three cases filed with the Fourth Division of the National Railroad Adjustment Board by the Railroad Yardmasters of America *vs.* Southern Pacific Company (Pacific Lines) involving Yardmasters R. V. Murphy, J. Besant and E. E. Wheeler:

"Resolved That the Secretary be instructed to write a letter to Mr. C. H. Burchfield, president of the Railroad Yardmasters of America, and the Chief Operating Officer of the Southern Pacific Company (Pacific Lines), notifying them the Fourth Division has deadlocked on the question of assuming jurisdiction to receive and hear above mentioned cases."

Thereafter, and on the same date, the said R. B. Parkhurst, Secretary of said Fourth Division, pursuant to
174 the above memorandum or resolution, sent to C. H. Burchfield, president of the Railroad Yardmasters of America, a letter informing him of the failure and refusal of the said Fourth Division to hear and determine said ex parte submissions or disputes, a copy of which letter is attached hereto as Exhibit "D" and by reference thereto made a part hereof.

5. That by the terms of Section 3, First (r), 45 U.S.C.A., Section 153 (r), it is provided as follows:

"The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.";

that the National Mediation Board has in the past refused and now continues to refuse to appoint a neutral referee to the respective divisions of the National Railroad Adjustment Board upon their failure to render an award in a dispute submitted to them, when such failure or refusal is a failure or refusal to accept, docket or hear a submission or dispute or when the said failure or refusal results from a deadlocking on the question of assuming jurisdiction of the parties or subject-matter of said submission or dispute; that a request for the appointment of a neutral referee to said Fourth Division by any of the parties to the above-mentioned three submissions or disputes, or by the said Fourth Division or any member thereof, is therefore, useless and unavailing.

6. That the duty of the said Fourth Division to take

jurisdiction of and to hear and determine said disputes arises under the laws of the United States.

Wherefore, these petitioners pray that the Court will issue to the said Fourth Division and the individual members thereof named as respondents herein a writ of mandamus commanding them to accept, docket and hear
175 the said three submissions or disputes above mentioned and to assume and take jurisdiction thereof and enter awards therein on the merits of each of said controversies; or in the alternative that it issue to the said parties a mandatory writ of injunction directing and ordering the said Fourth Division and the individual members thereof to accept, docket and hear said disputes and to assume and take jurisdiction thereof and to render awards on the merits in each of said disputes.

Railroad Yardmasters of America,
R. V. Murphy,
J. Besant,
E. E. Wheeler,
Petitioners.
By .....
Their Attorneys.

176 EXHIBIT "D"

(Letterhead of National Railroad Adjustment Board, Fourth Division, Chicago, Illinois.)

March 24, 1938.

Mr. C. H. Burchfield, President
Railroad Yardmasters of America,
312 First National Bldg.,
Columbus, Ohio.

Mr. A. T. Mercier, General Manager
Southern Pacific Company,
65 Market Street,
San Francisco, Calif.

Gentlemen:

With reference to the ex parte submissions filed with the Fourth Division in the following cases:

Request for reinstatement of R. V. Murphy to his regular assigned position of yardmaster for the Southern Pacific Company (Pacific System) at their Carlin Yard, Carlin, Nevada.

Request for reinstatement of J. Besant to his regular assigned position of yardmaster for the Southern Pacific Company (Pacific Lines), at their Carlin Yard, Carlin, Nevada.

Request for reinstatement of E. E. Wheeler to his regular assigned position of yardmaster for the Southern Pacific Company (Pacific Lines) at their Phoenix Yard, Phoenix, Arizona.

The Fourth Division, in regular session today, instructed its Secretary to notify you that this Division has deadlocked on the question of assuming jurisdiction to receive and hear the above mentioned cases.

Yours very truly,
(Sgd.) R. B. Parkhurst,
Secretary, Fourth Division.

177 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16031) * *

THE JOINT AND SEVERAL ANSWER OF RESPONDENTS E. J. HAMNER, CHARLES P. NEILL AND E. MURRIN TO THE ABOVE ENTITLED PETITION.

Now come E. J. Hamner, Charles P. Neill and E. Murrin, certain respondents in the above entitled cause and proceeding, and, jointly and severally, answering the petition in said cause and proceeding, aver that they are the duly selected, designated and acting members of the Fourth Division of the National Railroad Adjustment Board; that at the time of the institution of the above entitled proceeding, A. J. Hancock was a duly selected, designated and acting member of said Board and Division thereof; that subsequent to the institution of these proceedings, the said A. J. Hancock resigned as a member of said Board and Division, and that thereafter, on, to-wit; May 11, 1938, E. Murrin was duly selected, designated and appointed a member of said Board and Division thereof, to fill the vacancy therein created by the resignation of the said A. J. Hancock; that he is now a duly selected, designated and acting member of said Board and Division thereof; that he has been made a party respondent to this proceeding, and

a subpoena to him for his appearance has been issued
178 and although not served, he has entered his appearance herein, by his counsel; and said respondents, further answering said petition herein, jointly and severally admit each and every of the allegations of fact therein alleged and set forth, except as above, by their answer, qualified, respecting the membership on said Board and Division thereof at the time of the institution of these proceedings and thereafter; and said respondents, and each of them, aver that they, and each of them, are of the opinion that the Fourth Division of the National Railroad Adjustment Board has jurisdiction of the said three submissions or disputes of the said R. V. Murphy, J. Besant and E. E. Wheeler, referred to and mentioned in the petition herein, to the exclusion of the First, Second and Third Divisions of the said National Railroad Adjustment Board; and that said Fourth Division of said Board should accept, docket and hear said submissions or disputes, and make and enter awards therein.

E. J. Hamner,
Charles P. Neill,
E. Murrin,
By W. A. Morrow,
Their Attorney.

178½ United States District Court

Northern District of Illinois

Cause No. 16031 July 11, 1938.

Title of Cause.—United States ex rel Railroad Yardmasters of America, et al, *vs.* National Railroad Adjustment Board, Fourth Division, et al.

Brief Statement of Motion.—Motion of petitioners that petition for injunction be taken as confessed, and that decree awarding injunction be entered at respondents' cost.

Name of moving Counsel representing Robert Z. Hickmon.

Enter Order.
Draft.
W. H. H.

179 IN THE DISTRICT COURT OF THE UNITED STATES
(Caption—16031)

FINAL DECREE AND INJUNCTION

This cause coming on to be heard on this date upon the original petition of the petitioners, the joint and several answer of respondents E. J. Hamner, Charles P. Neill and E. Murrin, and on motion of petitioners that the said petition be taken as confessed as against the other respondents herein, and after hearing evidence herein and argument of counsel, and being fully advised in the premises, the court finds:

1. That the individual respondents constitute the Fourth Division of the National Railroad Adjustment Board, established and created by the laws of the United States, 45 U.S.C.A. Section 153 (3), and that they are presently the duly constituted, qualified and acting members of said Fourth Division.

180 2. That the said National Railroad Adjustment Board, so created and established, and the said Fourth Division thereof, have and maintain headquarters and conduct their hearings in the City of Chicago, State of Illinois.

3. That the petitioners, R. V. Murphy, J. Besant and E. E. Wheeler, are and were at all of the times mentioned in the original petition members of the Railroad Yardmasters of America, which was and is a national labor organization of the employees of carriers as the term is used in the Railway Labor Act (45 U.S.C.A. Section 153 (3)), and were employed as yardmasters by the Southern Pacific Company (Pacific System), a railroad carrier engaged in interstate commerce, and were so employed at all of the times mentioned in the original petition herein.

4. That in and by the terms of said Railway Labor Act, 45 U.S.C.A. Section 153, it is provided:

"'(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

'First division: To have jurisdiction over disputes involving train-and-yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This

division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

'Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

181 'Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

'Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.' ''

5. That yardmasters are not included in any of the classes of employees over whose disputes jurisdiction is by said Act given to the First, Second or Third Divisions, respectively, of said National Railroad Adjustment Board, nor do either of said last mentioned divisions of said Board have jurisdiction of disputes arising out of their employment in which yardmasters are involved.

6. That on March 21, 1938, the petitioner, Railroad Yardmasters of America, acting for and on behalf of the said petitioners, R. V. Murphy, J. Besant and E. E. Wheeler, filed with the said Fourth Division of the National Railroad Adjustment Board an ex parte submission of disputes which had theretofore arisen between said respective individual petitioners and said carriers by whom they were employed as yardmasters; copies of which said ex parte

submissions and statements of grievances are attached to the original petition herein and by reference thereto are made a part hereof as fully as if set out here verbatim.

7. That thereafter, on March 24, 1938, the said Fourth Division of the National Railroad Adjustment Board
182 failed and refused to hear and adjudicate the said three ex parte submissions or cases and with respect thereto adopted and entered of record in their proceedings a memorandum or resolution stating that the said Fourth Division had deadlocked on the question of assuming jurisdiction to receive and hear the said cases or disputes.

8. That the said Fourth Division of the National Railroad Adjustment Board had and now has jurisdiction to docket, hear and adjudicate said submissions, cases or disputes, and that on March 21, 1938, it became and was the duty of said Fourth Division and the individual members thereof to docket, hear and adjudicate the said three ex parte submissions or disputes.

9. That the National Mediation Board has in the past refused, and now continues to refuse, to appoint a neutral referee to the respective divisions of the National Railroad Adjustment Board upon their failure to render an award in a dispute submitted to them when such failure or refusal is a failure or refusal to accept, docket and hear a dispute or submission when the said failure or refusal results from a deadlocking on the question of assuming jurisdiction of the parties or subject matter of said submission or dispute; and that particularly, the said National Mediation Board has refused, and continues to refuse to appoint a neutral referee to the said Fourth Division of said National Railroad Adjustment Board, to hear and determine said three ex parte disputes lodged with the Fourth Division by the individual petitioners herein as above set forth, and that a request for the appointment of a neutral referee to said Fourth Division by any of the parties to the above mentioned three submissions or disputes is useless and unavailing.

183 10. That the duty and jurisdiction of the said Fourth Division of the National Railroad Adjustment Board, to take jurisdiction of and hear and determine said ex parte disputes or submissions, arises under the laws of the United States.

11. That the said E. J. Hamner, Charles P. Neill and E. Murrin have entered their general appearance herein

and have filed their joint and several answer to the original petition; that the said R. A. Walton, S. J. Hogan, R. B. Parkhurst, and the Fourth Division of the National Railroad Adjustment Board have each entered their general appearance herein.

12. That after the entry of the respective appearances of the said respondents, there was entered herein on May 9, on motion of Michael L. Igoe, United States District Attorney, and by agreement of the petitioners, an order extending the time for all respondents to plead to the petition, to May 25, 1938; that on May 24, 1938, there was entered herein an order extending the time for all respondents to plead, to and including June 25, 1938, and that such time has now expired with no pleading having been filed, except the answer of the three individual respondents as above set forth.

13. That as to the individual respondents R. A. Walton, S. J. Hogan, R. B. Parkhurst, and National Railroad Adjustment Board, Fourth Division, the original petition herein is taken as confessed for want of any plea, answer or demurrer thereto; and that after the entry of appearances of the other individual respondents, and on June 25, 1938, the time for said respondents to plead to the original petition expired, and that none of said respondents, except the said E. J. Hamner, Charles P. Neill and E. Murrin, have filed any plea, answer or demurrer to the original petition herein, and that as to all of said individual respondents who have entered their appearance and have not filed any plea, answer or demurrer, the said petition is taken as confessed.

184 14. That this Court has jurisdiction of all of the parties hereto and of the subject matter hereof, and that the equities in said cause are with the petitioners.

15. That all the allegations of the original petition are here found as findings of fact, the same as if the said allegations were here set out in full verbatim.

16. The Court finds the petitioners are entitled to the relief as prayed in the original petition and are entitled to the issuance by this Court of a mandatory writ of injunction, directing, ordering and commanding the said Fourth Division of the National Railroad Adjustment Board, and the individual members thereof, to accept, docket, take jurisdiction of, and hear said three ex parte submissions or disputes, lodged and filed with the said

Fourth Division by the petitioners as above set forth, and to render awards on the merits in each of said disputes.

16. The Court further finds each and every of the above and foregoing as conclusions of law, and the above and foregoing findings of fact and conclusions of law are by reference thereto included in and made a part of this final decree.

It Is, Therefore, Ordered, Adjudged and Decreed That the Fourth Division of the National Railroad Adjustment Board, C. W. Deal, R. B. Parkhurst, A. J. Hancock, R. A. Walton, Charles P. Neill, E. J. Hamner, S. J. Hogan and E. Murrin, individually, and as members of said Fourth Division of the National Railroad Adjustment Board, and their successors on such division, and their agents, officers, attorneys and servants, be, and they hereby are enjoined and commanded to take jurisdiction of, to docket, hear, determine and enter awards on the merits in the said three ex parte submissions or disputes, heretofore filed with
185 said Fourth Division of the National Railroad Adjustment Board, on or about March 21, 1938, by the petitioner Railroad Yadrmasters of America, acting for and on behalf of the said R V. Murphy, J. Besant and E. E. Wheeler, petitioners, and that the terms of this final decree and injunctional order shall be perpetually in effect.

It Is Further Ordered that the sum of $20.06 taxed herein as the costs of the petitioners, be paid by the said respondents to the petitioners and that they have execution therefor.

Holly,
Judge, District Court.

Entered this 11th day of July, 1938.

186 EXHIBIT 2.

187 Order of Railway Conductors
of America

August 25, 1938.

Mr. J. C. Rankine,
Asst. to Vice Pres.,
Great Northern Ry.,
St. Paul, Minnesota.

Dear Sir:

Referring to Secretary Parkhurst's of the Fourth Division letter of August 18, regarding the yardmaster cases of V. E. Benjamin and M. L. Nagle for loss of earnings by reason of reduction in force November 1, 1937, in which he advised that the claim has been given Docket Case No. 23 and oral hearing on same set for 10 A. M. (Chicago time), Tuesday, September 13, 1938.

Permit me to advise that it is the position of our organization that this case is not properly a Fourth Division case, as we regard it properly under the jurisdiction of the First Division, whose members on both sides of the table are in direct contact with the agreements covering yard services. This division has already decided some yardmaster cases, and our organization has a representative on this division. This letter is written as a formal request that you please withdraw any papers you have sent to the Fourth Division in connection with these claims, and will you please join me in a submission of claims to the First Division, and oblige, advising.

Yours truly,
(Sgd.) R. E. Landis,
Chairman.

REL:L
cc R. B. Parkhurst,
J. A. Phillips,
G. H. Oram.

188 EXHIBIT 3.

189 Great Northern Railway Company

St. Paul, Minnesota,
August 30th, 1938.

Mr. R. E. Landis, General Chairman,
Order of Railway Conductors,
Saint Paul, Minnesota.

Dear Sir:

Referring to your letter of August 25th, in regard to submission of the claims of Yardmasters V. E. Benjamin and M. L. Nagle, which were sent to the Fourth Division of the National Railroad Adjustment Board.

In view of the existing injunction issued by Judge Holly on July 11th, and in further view of the resolution adopted by the Fourth Division on August 18th, I do not see how I legally can agree to withdrawal of such case from that division nor submission of it to the First Division.

I presume that as complainant, you are at liberty to withdraw the complaint, and I presume that you also have the right to submit the complaint as an ex parte matter to the First Division for their consideration if you so desire.

However, I am not at liberty to join you in such submission.

(Sgd.) J. C. Rankine.

190 EXHIBIT 4.

191 Order of Railway Conductors
of America

Mr. R. B. Parkhurst,
Secretary, Fourth Division,
National Railroad Adjustment Board,
220 S. State Street,
Chicago, Illinois.

Dear Sir:

I am in receipt of a letter dated August 26, addressed to Mr. Rankine and me, in connection with yardmasters case, Great Northern Railroad, covered by your Board's Docket No. 23.

It is my desire to withdraw this case and formal notice of its withdrawal is hereby given.

Yours truly,
(Sgd.) R. E. Landis,
General Chairman, O. R. C.,
Great Northern Railroad.

Copy to:
Mr. J. C. Rankine.

192 EXHIBIT 5.

193 National Railroad Adjustment Board
Fourth Division
Chicago, Illinois

September 2, 1938.

Mr. J. C. Rankine, Asst. to Vice Pres.,
Great Northern Railway Company,
Room 912, Great Northern Bldg.,
St. Paul, Minn.

Dear Sir:

We are in receipt of a letter from Mr. R. E. Landis, General Chairman, O. R. C., Great Northern Railway, dated at Chicago, Illinois, September 1, 1938, reading as follows:

"I am in receipt of a letter dated August 26, addressed to Mr. Rankine and me, in connection with yardmasters

case, Great Northern Railroad, covered by your Board's Docket No. 23.

It is my desire to withdraw this case and formal notice of its withdrawal is hereby given."

Inasmuch as this case was submitted jointly, please advise if you concur in request of petitioner for withdrawal.

Yours very truly,
(Sgd.) R. B. Parkhurst,
Secretary, Fourth Division.

cc Mr. R. E. Landis, General Chairman,
Order of Railway Conductors,
1014 Pioneer Bldg.,
St. Paul, Minn.

194 EXHIBIT 6.

195 Great Northern Railway Company

Saint Paul, Minnesota,
September 3rd, 1938.

Mr. R. B. Parkhurst,
Secretary, Fourth Division,
National Railroad Adjustment Board,
Chicago, Illinois.

Dear Sir:

I am in receipt of a copy of letter to you from General Chairman Landis of the Order of Railway Conductors notifying you of their desire to withdraw case covered by your Docket No. 23.

Inasmuch as the organization is the complainant in this case, the carrier, of course, has no objection to their withdrawal of such complaint.

(Sgd.) J. C. Rankine.

cc Mr. R. E. Landis.

service, during which time I also worked in a railroad yard in France as a yardmaster, trainmaster and assistant superintendent.

The Court: Q. When did you start as a yardmaster?

A. 1911.

The Court: All right.

The Witness: 1928 to 1930 as a trainmaster of the Chicago Division at Milwaukee, Wisconsin. 1930 to 1937 again as a yardmaster. In 1937 to 1939 as a trainmaster. 1939 to 1941 as assistant superintendent, Chicago Terminals, and from that date up to the present time as superintendent.

219 Mr. Smith: Q. Mr. Kiesele, did you hear Mr. Green testify?

A. I did.

Q. Did you hear him define certain terms in response to my questions?

A. I did.

Q. Did you hear his cross-examination?

A. I did.

Q. If you were asked the same questions by me and by counsel on the other side with reference to the meaning of these various terms, would you give the same answers?

A. I would.

Mr. Smith: That is all. I will elaborate that, if the court is interested.

The Court: That is a short way of putting it.

Mr. Hassenauer: No cross-examination.

Mr. Smith: That is all.

(Witness excused.)

220 MORRIS E. SOMERLOTT, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. Will you state your name, residence and occupation, please?

A. Assistant manager of personnel for the Southern Pacific Company, Pacific Lines, San Francisco, California.

Q. How long have you been engaged in railroad service?

A. I was first employed by the Southern Pacific Company.

Q. I am not asking you to state it, sir; just the date, since when?

A. August, 1915.

Q. Will you state very briefly what that experience has consisted of since that date?

A. Yardmaster's messenger boy, call boy, yard clerk, warehouseman, brakeman, conductor, trainmaster and my present position.

Q. Now, when I refer to railroad service, I intended to cover your service both for the railroad managements and for the employees. You might make it complete
221 and just refer to your service as a representative of the employees.

A. While I was in train service I was the local chairman of the Trainmen, Fresno, California; also general secretary, secretary of the genera' grievance committee of the Southern Pacific Lines for the Brotherhood of Railroad Trainmen.

Q. When did you first begin to work around railroad yards?

A. 1915.

Q. Did you hear the testimony of Mr. Green, who preceded you on the stand?

A. Yes, sir.

Q. Did you hear him define certain terms in his testimony, in response to my questions?

A. Yes, sir.

Q. Did you hear his testimony on cross-examination in response to Mr. Hassenauer's questions?

A. Yes, sir.

Q. If you were asked the same questions which I and Mr. Hassenauer asked Mr. Green, in reference to these various terms and definitions, you would give the same answers in all respects?

A. I would, sir.

222 Mr. Smith: That is all.

Cross-Examination by Mr. Hassenauer.

Q. Mr. Somerlott, you never were a yardmaster, were you?

A. No, I was not a yardmaster.

Q. You testified you were on the, or that you were the local chairman of the Brotherhood of Railroad Trainmen at one time?

196 EXHIBIT 7.

197 National Railroad Adjustment Board

First Division

Chicago, Illinois

August 28, 1941

Dockets 6404
10665
12101
12277
12278
12280
12294
12295
11801

Messrs. Fred W. Lewis,
Wm. Bishop,
Paul M. Carter,
R. E. Edrington,
F. J. Williams

Gentlemen:

On the 11th day of July, 1938, a final decree and injunction was entered by Honorable William H. Holly, Judge of the District Court of the Northern District of Illinois, Eastern Division, in the case entitled United States, ex rel, Railroad Yardmasters of America, R. V. Murphy, J. Besant, E. E. Wheeler, *vs.* National Railroad Adjustment Board, Fourth Division, C. W. Deal, Chairman, R B. Parkhurst, Secretary, A. J. Hancock, R. A. Walton, Charles P. Neill, E. J. Hamner, S. J. Hogan, and E. Murrin, Chancery No. 16031. Said decree specifically enjoined and commanded that the Fourth Division of the National Railroad Adjustment Board and the members of that division individually take jurisdiction of, hear, determine and enter awards on the merits on three ex parte submissions or disputes of R. V. Murphy, J. Besant and E. E. Wheeler, employed as yardmasters. That decree provided in part:

"That yardmasters are not included in any of the classes of employees over whose disputes jurisdiction is by said act (Railway Labor Act, 45. U.S.C.A., Sec. 153) given to the First, Second or Third Divisions, respectively of said National Railroad Adjustment Board, nor do either of said last mentioned divisions of said board have jurisdiction of disputes arising out of their employment in which yardmasters are involved."

There are now pending before the First Division of the National Railroad Adjustment Board the following submissions or disputes arising out of employment in which yardmasters are involved:

Docket No. 6404—Order of Railway Conductors *vs.* Great Northern Railway Company.

Docket No. 10665—Brotherhood of Railroad Trainmen *vs.* Southern Pacific Lines in Texas and Louisiana.

198 Dockets 12101
12277
12278
12280
12294
12295

Brotherhood of Railroad Trainmen
vs.
Southern Pacific Company
(Pacific Lines)

In view of the said final decree and injunction of July 11, 1938, the carrier members of the First Division hereby give notice that they will not agree to set the said cases for hearing; and since it appears that by the terms of the amended Railway Labor Act as construed by the District Court of the Northern District of Illinois, Eastern Division, jurisdiction over the subject matter of each of the aforecited dockets is vested in the Fourth Division, we propose that these cases and similar disputes and submissions arising in the future be docketed with the Fourth Division of the National Railroad Adjustment Board, and that said Fourth Division hear, determine, and enter awards thereon.

There is also at present pending in the First Division Docket 11801—Trainmen *vs.* Minneapolis, St. Paul & Sault Ste. Marie Railway—involving the seniority dating of a yardmaster as such, and upon which hearing has been waived. Jurisdiction over the subject matter of this docket we also maintain is vested in the Fourth Division, and not the First Division. Consequently, we will not participate in any consideration of the merits, and propose that said docket also be filed with the Fourth Division, and that said

Fourth Division hear, determine, and enter an award thereon.

Yours very truly,
(Sgd.) T. K. Faherty,
For the Carrier Members,
First Division.

Copies to:

Mr. T. S. McFarland, Secretary, First Division: To be attached to and made a part of the division's master files on these nine dockets.

Mr. R. A. Walton, Chairman, Fourth Division.

Mr. E. J. Hamner, Vice Chairman, Fourth Division.

Mr. R. B. Parkhurst, Secretary, Fourth Division

199 And on the same day, to wit, the 10th day of October, 1944, there was filed in the Clerk's office of said Court a certain Transcript of Testimony, in words and figures following, to wit:

200 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—3788) * *

Stenographic Transcript of proceedings had and evidence adduced at the trial of the above-entitled case before Hon. William H. Holly, Judge of said District Court, in the United States Courthouse at Chicago, Illinois, on Monday, the 3d day of January, A. D. 1944, commencing at 10 A. M.

Appearances:

Mr. Craven Shuttleworth and Mr. Everett Gordon, on behalf of the plaintiff.

201 Messrs. Sidley, McPherson, Austin & Burgess, by Mr. Douglas F. Smith and Mr. Robert Diller, and Mr. Hallan Huffman, on behalf of certain defendants.

Mr. Leo J. Hassenauer, on behalf of Defendants F. J. Williams, William Bishop, Paul M. Carter, R. E. Edrington and Fred Lewis.

Messrs. Poppenhusen, Johnston, Thompson & Raymond, by Mr. Anan Raymond, on behalf of Railroad Yardmasters of America, intervener.

203 The Court: All right. You may proceed with such evidence as you wish. I suppose the first thing is the stipulation?

Mr. Shuttleworth: I have assumed, your Honor, that without formally being offered in evidence, the stipulation is before the court.

Mr. Smith: I think it ought to be offered.

Mr. Shuttleworth: Do you have any objection?

The Court: I think it ought to be offered. It is not in evidence unless it is offered. I don't know whether it is necessary to read the entire stipulation at this time. Do you wish to do that?

Mr. Smith: I don't think it is necessary to do that.

The Court: I don't think so.

Mr. Shuttleworth: The original stipulation is filed.

The Court: That may be marked and accepted in evidence.

Mr. Smith: That stipulation shows on its face, doesn't it, that it has been executed by counsel for all the parties in the case and we jointly offer it?

Mr. Shuttleworth: That is so.

204 The Court: Jointly—Exhibit 1.

(Said document, so received in evidence, was marked Exhibit 1.)

205 Mr. Smith: Now, your Honor, we have a witness who is a railroad officer, whom we desire to call to testify on what this word means, what these words mean in the railroad vernacular, on the theory and on the basis that when Congress uses certain words in a statute that are taken from a technical field, Congress is presumed to have used those words in the sense they are generally used.

The Court: Yes.

Mr. Smith: And I am sure your Honor does not want authority cited on that.

207 The Court: You may go ahead.

Mr. Smith: I will call my witnesses.

I just wanted to respond to this suggestion that they have been trying to find out what we are going to put in evidence. That injects an element of mysticism in the case. We had a stipulation that it would cover all the evidence that was to be offered. We said we would—

The Court: I will let any evidence in they may decide they want to offer at any time, and be prepared

208 to offer it subject to the limitations.

THEODORE L. GREEN, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. Will you state your name, residence and occupation, please?

A. Theodore L. Green, general manager, Indiana Harbor Belt, C. R. & I. Railroad; residence, Chicago, Illinois.

Q. How long have you been employed in that capacity?

A. Since September 1, 1943.

Q. Will you just with great briefness state where the Indiana Harbor Belt is located and what it does?

A. It is located in the Chicago metropolitan area, Chicago switching district, and it handles traffic between the Western lines and Eastern lines, or vice versa, to various industries in this locality, and it has a belt line, in other words, as between the various railroads.

Q. Does it operate a number of yards, as that term is used in railroad parlance?

A. Yes, sir.

209 Q. What yards does it operate?

A. Well, we have yards located at Norpaul, Illinois, Argo, Illinois, Blue Island, Illinois, Calumet City, Illinois, Gibson, Indiana, Michigan Avenue, or Indiana Harbor, Indiana.

Q. What, in a general way, and briefly, are your duties as general manager, to operate the road, subject to the president and the board of directors?

A. Yes, sir.

Q. Very briefly, will you tell the court what your railroad experience has been, not itemizing the various employments you have had too finely, but just in a general way summarize your experience?

A. I was employed by the Michigan Central as a telegrapher in 1902, then raised to a train dispatcher, chief dispatcher, assistant trainmaster, trainmaster, assistant superintendent, superintendent, assistant general manager and general manager, where I am at the present time.

Q. Did you say when you began your railroad employment?

A. March, 1902.

Q. You have been continuously employed in railroad service since that time?

210 A. Yes, sir.

Q. During that period, will you state whether or not the term "yard service employees" has had a certain meaning in the railroad field? I am not asking you to state what the meaning is; I am asking you if it has had a certain definite meaning?

A. It refers to certain employees who make up and break up trains in yards within defined limits.

They also do other switching of cars, placing and pulling of cars at industries within those yards; namely, engineers, firemen, conductors or engine foremen, yard brakemen, switchmen or helpers, as they are termed.

Q. Now, has it had that general meaning throughout the period of your experience and to your knowledge?

A. Yes, sir.

Q. Does the term as you have defined it include yardmasters?

A. No, sir.

Q. Can you tell the court what the history of that term is, or explain to the court how it came to have that meaning that you have ascribed to it?

A. Well, for many years, or for as long as I can remember, employees in yard service who had the making

211 up and breaking up of trains and the other switching as referred to before have always had a different rate of pay than employees engaged in a similar service and working with, outside those definite yard limits, or yards.

Q. You say for many years, or as far back as you can remember, that embraces a period prior to 1934-1935, does it?

A. Yes, sir.

Q. For many years prior?

A. Yes, sir.

Q. Is there any term, or are there any terms in the railroad field that are equivalent to, or have the same meaning as the term "yard service employees"?

A. Yard crews, or yard men.

Q. You mean by that answer that—

A. They would call them yard crews or yard men—

Q. that the term "yard crews" and "yard men" are the equivalent of the term "yard service employees," is that what you mean?

A. Yes, sir.

Mr. Smith: I think that is all.

212 *Cross-Examination by Mr. Hassenauer.*

Q. Mr. Green, in giving the class of employees in a yard who operate with the work of a yardmaster you used the term "switchmen" among the terms "engineers, firemen, conductors, engine foremen, yard brakemen": By "switchmen," do you mean switch tenders?

A. No, sir.

Q. Switch tenders are also employed in the yard service of a railroad, are they not?

A. Yes, sir.

Q. You do not mean, then, by the term "switchmen" to include the term "switch tenders"; that is a separate classification of employees, is it not?

A. Yes, sir.

Q. Have you ever been yardmaster?

A. No, sir.

Q. Have you ever appeared before the First Division of the National Railroad Adjustment Board in sustaining the position of a carrier in any dispute involving a yardmaster with your road?

A. No, sir.

Mr. Smith: May I hear that question?

(Question read.)

213 Mr. Smith: May I object to that as not proper cross-examination and irrelevant?

The Court: It might have a bearing on the question of his knowledge.

Objection overruled.

Mr. Hassenauer: Q. How many miles of tracks does the Indiana Harbor Belt occupy?

A. Well, approximately 45 miles in length.

Q. That is an exceptional road in this district, is it not?

A. Yes, sir.

Q. Approximately how many yardmasters are employed by the Indiana Harbor Belt Railroad?

A. Well, let's see; I would say approximately, I would say in the neighborhood of sixty yardmasters, approximately.

Q. Do you know whether or not those yardmasters are affiliated with any of the standard railroad labor organizations?

A. They are.

Q. Which organizations?

A. Yardmasters of America.

Q. Railroad Yardmasters of America?

A. Yes, sir.

213½ Q. With headquarters at Columbus, Ohio?

A. I would not state where their headquarters are.

Q. At any rate, the intervener in this case?

A. As I understand it, they are; yes sir.

Q. Will you tell us whether or not, Mr. Green, yardmasters work within the same defined limits as the yard men?

A. Yes, sir.

Q. Thus yard foremen have a different rate of pay than the helper?

A. Yes, sir.

The Court: Yard foremen, I take it, is synonymous with yardmaster, yardmasters and yard foremen?

Mr. Smith: No.

The Witness: Not in the same category.

Mr. Smith: Q. Just explain that, Mr. Green: The engine foreman is about the same as a conductor out on the line? Mr. Hassenauer and I are not in any disagreement on that.

The Court: Mr. Hassenauer used the term "yard foreman" and I wondered if that meant "yardmaster."

The Witness: He is the conductor; in other words, that has the immediate supervision of that particular crew that is working with him.

214 Mr. Hassenauer: Q. As a matter of fact, wouldn't you say that the work of a yardmaster is more closely allied to that of the man engaged in train and engine service than it is with any other group or class of employees in the yard?

A. Yes, sir.

Mr. Hassenauer: That is all.

Redirect Examination by Mr. Smith.

Q. Mr. Green, I find from one of Judge Holly's questions that I had not developed, perhaps, as I should have, the relationship between the work done in the yard and that done out on the line. Now, can it be said generally that the switchmen or brakemen in the yard does about the same category of work as brakemen out on the line?

Mr. Hassenauer: I object to that, your Honor. I think it is immaterial. I don't think it is proper redirect examination.

The Court: I am inclined to let it go in.

Mr. Smith: I will withdraw the question. I thought it was not clear. If counsel thinks it is not important, I will pass it.

215 Q. Mr. Hassenauer asked you if the Indiana Harbor was an exceptional line. Is it exceptional in that for your mileage you have a great deal more of work than other railroads?

A. Yes, sir.

Q. As a matter of fact, the Indiana's service is very largely done in yards, isn't it?

A. Well, it comes within the yard rules entirely. That is, we don't define any road service or yard service on the Indiana Harbor Belt, in particular. The yard service rule applies. A different rate of pay comes in where you call one "transfer service" and the other "yard service."

Q. Mr. Hassenauer also asked you if the work of the yardmaster was not more closely aligned with the work of the yard men than with any other category of work.

Mr. Hassenauer: That is not what I asked. I don't want to interrupt.

Mr. Smith: I am just identifying the question.

Q. Now, the yardmaster's work is pretty closely identified with his clerks and his car checkers and his yard checkers and his weighmasters, isn't it?

A. Yes, sir.

Mr. Smith: That is all.

216 *Examination by Mr. Raymond.*

Q. Mr. Green, this is not cross-examination, at all, but it is to clear the record up in one particular. Do you know the name of the yardmasters' organization that represents the yardmasters on the Indiana Harbor Belt?

A. Yardmasters Association of America.

Q. In fact, it is the Railroad Yardmasters of North America, is it not?

A. Yardmasters Association of North America.

Q. Railroad—

A. I will stand corrected on that. I wouldn't say definitely.

Q. At all events, it is not the Railroad Yardmasters of America, the intervener here?

The Witness: All right.

Recross Examination by Mr. Hassenauer.

Q. Do you know that as a fact?

A. I might look at one of my agreements, or something of that sort.

Q. You don't know?

A. I would say that—I wouldn't say positively.

217 Mr. Hassenauer: All right.

The Court: Wait a minute. I suppose that is a matter upon which the parties can agree.

Mr. Smith: I would think so. I am amazed that there is any difference of opinion about it.

The Court: Can the parties agree on it as a fact that can be established without difficulty?

Mr. Hassenauer: I haven't seen the agreement.

Mr. Smith: I am sure we can.

The Court: I don't think it is a matter of any importance.

Mr. Smith: I don't see that it is. Mr. Hassenauer brought it up. Maybe we ought to clear it up.

That is all I have. That is all, Mr. Green.

(Witness excused.)

EDMUND G. KIESELE, called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. Will you state your name, residence and employment, please?

A. Edmund G. Kiesele, 1724 North Oak Park Avenue.

218 Q. Chicago?

A. Chicago, Illinois. Superintendent, Chicago Terminals, Milwaukee Railroad.

Q. Will you very briefly state what your railroad experience has been?

A. I started my railroad career in June of 1907 as a call boy, and following that I worked as a yard clerk, a clerk in the freight house, dispatcher's office and superintendent's office. This service was during 1907 to 1911, approximately four years.

From 1911 until 1928 I worked as a yardmaster, with the exception of two years in 1918 and 1919, when I was in the

A. Yes, sir.

Q. The Brotherhood of Railroad Trainmen at that particular time represented yardmasters on your road?

A. They did not represent yardmasters.

Q. They do now on your road?

A. No, sir.

Q. Who has the agreement on the Southern Pacific?

A. Railroad Yardmasters of America.

Q. That is the intervener in this case?

A. To my knowledge, coming into the court room, yes, sir.

Q. As local chairman of the Trainmasters at that particular time, did you come in contact with employees performing yardmasters' duties?

A. Yes, sir.

223 Q. The work of yardmasters, that yardmasters perform in the yard, was closely allied to those of the train and enginemen, was it not?

A. In a supervisory way.

Q. More so than it would be with the clerical staff, or the telegraphers, in the way of breaking up and making up of trains in the yards?

A. No, I would not say more so. He was a yard supervisor. He would have jurisdiction over the clerks and the switchmen.

Q. Just how much of a clerical duty is performed in the yard?

A. Well, the car records of in and outbound waybills, manifests, wheel reports; there are a multitude of reports.

Q. Are they actually employed in the yard, or employed outside of the yard, these clerks?

A. They are in the yard, inside the limits.

Q. Are you familiar with the operation of the National Railroad Adjustment Board?

A. I don't quite understand your question.

Q. Have you ever appeared before any division of the Adjustment Board on behalf of your road?

Mr. Smith: That is objected to as immaterial.

224 The Court: That may be. I will let it go in and determine later.

A. Not representing the railroad, no.

Mr. Hassenauer: Q. In what capacity did you appear?

A. As representative of the employees.

Q. What division did you appear before?

A. Division 1.

The Court: I didn't understand.

A. Division 1.

Mr. Hassenauer: Q. That was when you were local chairman of the Brotherhood of Railroad Trainmen?

A. When I was general secretary of the General Grievance Committee.

Q. Of the Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. Mr. Somerlott, can you tell us where the disputes involving yard clerks of the Southern Pacific Lines are referred to, to what division of the Adjustment Board?

A. Division 3.

Mr. Hassenauer: That is all.

Mr. Smith: That is all.

(Witness excused.)

225 Mr. Smith: That completes our oral testimony.

I might say that paragraph 2 of the stipulation reads as follows:

"It is further stipulated that—" maybe your Honor would just like to glance at that paragraph 2.

The Court: Yes.

(A document was handed to the court.)

Mr. Smith: Have you noted that, your Honor?

The Court: Yes.

Mr. Smith: Now, by such reference to, and identification, we desire to put into the record certain awards and certain submissions, and I shall for the purpose of the record so refer to and identify those submissions and awards.

Award 1464, docket 1428—

Mr. Hassenauer: Pardon me, Mr. Smith. Are those awards attached to the answer filed by the carrier members of the Board as an appendix to the answer or something else?

Mr. Smith: They include those, as I recall, and include a number of additional ones.

Mr. Hassenauer: You are giving the additional ones?

Mr. Smith: I am identifying and referring to certain
226 submissions and awards within the language of paragraph 2.

The Court: I suppose those are included in the answer as well as some others, is that it?

Mr. Smith: Yes; a rather large number of others.

The Court: This is a matter that goes into the record: I should be going up to the judges' meeting and—

Mr. Smith: Yes.

The Court: I don't see any reason why you should not proceed to put them in in my absence. We will recess until two o'clock.

Mr. Hassenauer: Thank you.

Mr. Smith: Have you a copy of that?

The Court: I suppose there is no controversy over that.

Mr. Smith: We won't get into any of the controversial phases of it.

Award 1464, docket 1428, First Division awards, First Division, N.R.A.B., Vol. 8, Page 187.

Award 1728, docket 3312, First Division, O.P.C.I.T., Vol. 9, Page 414.

Award 2065, docket 3684, First Division, O.P.C.I.T., Vol. 11, Page 966.

Award 3055, docket 5751, First Division, Vol. 17, Page 330.

Award 3609, docket 5994, First Division, Vol. 21, Page 35.

Award 4466, docket 8881, First Division, Vol. 26, Page 370.

Award 5816, docket 5518, First Division, Vol. 34, Page 89.

Award 7355, docket 11023, First Division, Vol. 46, Page 383.

Award 67, docket 68, Fourth Division, Vol. 1, Page 580.

Do you gentlemen accept that as a sufficiently specific reference and identification to—and in each instance these are from the reports of N.R.A.B.—is that sufficiently specific?

Mr. Smith: And the following submissions, submissions in Docket 6406, First Division; submissions in Docket 6837, First Division; submissions in Docket 11801, First Division.

That completes the awards. That is all.

Mr. Raymond: I am going to go over these. I will wait until after recess. I think they are things of which the court would take judicial notice.

229 Mr. Smith: Your Honor, we have referred to the awards and submissions we wanted to put into the record, and counsel said that they had been sufficiently identified for that purpoes.

May we understand, then, pursuant to paragraph 2 of the stipulation they are in evidence?

The Court: Yes.

Mr. Smith: This, I think, does not come within paragraph 2 of the stipulation.

This is an excerpt from a decision of the Interstate Commerce Commission in Ex Parte No. 106, in the six-hour investigation, officially reported in 190 I.C.C. 750, dated
230 December 6, 1932. Now, there is just an excerpt from that report that we should like to refer to here, and I think the court will take judicial knowledge—

The Court: Oh yes.

Mr. Smith: (continuing) of the reports of the Interstate Commerce Commission, but for convenience may I hand your Honor the excerpt?

The Court: Yes. It may be well for the sake of convenience to put in evidence all these things so that they will be in the file when I come to consider the case.

Mr. Smith: All right, your Honor.

231 Mr. Smith: I have here the submissions and awards that were referred to by us, and that are now in the record, and I had intended, your Honor, to make some reference in the discussion of the case to these, of course, and that is the reason they are offered.

234 Mr. Smith: I offer in evidence Defendants' Exhibits 1, 1-A to 1-H, inclusive, and Defendants' Exhibit 2.

The Court: They may be received in evidence.

(Said documents so offered and received in evidence were marked as Defendants' Exhibits 1, 1-A to 1-H, inclusive; and Defendants' Exhibit 2, and are in words and figures as follows, to-wit:)

235 Mr. Smith: If your Honor, please, here are three excerpts from awards or submissions that are set up in the defendants' answer, and I think they are not now in evidence, and I want to offer them in evidence again under this paragraph 2 of the stipulation. I would like to have these three excerpts marked as Defendants' Exhibits 3, 3-A and 3-B.

The Court: They may be received in evidence.

(Said documents so offered and received in evidence were marked as Defendants' Exhibits 3, 3-A and 3-B, and are in words and figures as follows, to-wit:)

236 Mr. Smith: That is our case and we close.

The Court: Any rebuttal?

Mr. Raymond: Just some additional documents under the reservation of right in the stipulation.

Mark these Intervener's Exhibits 1 to 6.

(Documents so marked.)

Mr. Smith: Mr. Shuttleworth, did you have an opportunity to examine the documents I handed you before the noon hour?

Mr. Shuttleworth: Yes, I did.

Mr. Smith: Is there any dispute about their being what they purport to be?

Mr. Shuttleworth: I am not sure of the purpose, what they are offered for.

Mr. Smith: That is something else again. You are not raising any questions about their being genuine excerpts from the documents?

Mr. Shuttleworth: I haven't had a chance to examine them.

The Court: We will assume that they are subject to check.

Mr. Raymond: In addition to the first five marked Intervenor's Exhibits 1 to 5, both inclusive, Intervener's
237 Exhibit 6 is Circular 76-2. I didn't have a copy of that to submit to you before adjournment. I just borrowed one from Mr. Smith. I will have to get that back and substitute a copy; also get a copy into the hands of counsel for the plaintiffs, subject to the plaintiff's check, and I would like to offer in evidence Intervener's Exhibit 6.

The Court: It is just a question of the authenticity of the document?

Mr. Raymond: A question as to the purpose for which they are offered which, of course, can be stated in the briefs and the argument.

The Court: Admitted subject to your check.

(Said documents so offered and received in evidence were marked as Intervener's Exhibits 1 to 6, both inclusive, and are in words and figures as follows, to-wit:)

238 Mr. Smith: I thought it was clear, but one of my colleagues was not certain whether the court admitted in evidence all of these exhibits?

The Court: Yes; I did admit them all in evidence.

Mr. Smith: Some question was raised by Mr. Hassenauer as to what organization it is that represents yardmasters on the Indiana Harbor Belt.

I might say to you, Mr. Hassenauer, that Mr. Green has stated to us that the organization is not the intervener here, but the Railroad Yardmasters of North America. He is here and has the agreement.

Would you care to interrogate him on that?

Mr. Hassenauer: Let him remain where he is and I would like to ask him one question.

Mr. Green, has that agreement been filed with the National Mediation Board in accordance with Section 5-E of the Railway Labor Act?

Mr. Green: Yes, sir.

Mr. Hassenauer: I didn't find it in the appendix to the Board report. I just wanted to know for my own information.

Mr. Raymond: The question of fact is cleared up.

The Court: It will be taken that Mr. Green has so testified.

239 Mr. Hassenauer: That is all right. There is no question about it that is this agreement with the other organization.

I would like to have Mr. Kiesele recalled for one question.

The Court: All right.

Mr. Hassenauer: He testified previously and I have one question I would like to ask on cross-examination, if I may.

The Court: All right.

EDMUND G. KIESELE, recalled as a witness herein, having been previously sworn, resumed the stand and testified further as follows:

Recross Examination by Mr. Hassenauer.

Q. You are the same Mr. Edmund G. Kiesele who was sworn and testified in this proceeding this forenoon?

A. Yes, sir.

Q. Are you familiar with the promotion of yardmen from yard service employees on your railroad?

A. Yes, sir.

Q. Are yardmasters promoted from that yard serv-
240 ice employees on your road?

A. They are promoted from so-called yardmen.

Q. Yardmen?

A. Yes, sir.

Q. That is as a result of a schedule agreement, is it not?

A. Yes, sir.

Q. And following their promotion to yardmasters, do they retain their seniority from the craft or class from which they were promoted?

A. They do.

Mr. Hassenauer: That is all.
Mr. Smith: No questions.
Mr. Raymond: Just a moment, please. All right.

Redirect Examination by Mr. Smith.

Q. You are testifying as to what the situation is on the Milwaukee?
A. Yes, sir; and Chicago Terminals.
Q. Do you know whether the same situation or a different situation exists on other railroads?
A. No, I do not.
Mr. Smith: That is all.
241 Mr. Hassenauer: Thank you.
(Witness excused.)
242 Mr. Shuttleworth: I would like to call Mr. Nemitz, in rebuttal, your Honor.
The Court: Very well.

F. H. NEMITZ, called as a witness on behalf of the plaintiffs, in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Shuttleworth.

Q. Your name is F. H. Nemitz?
A. Yes, sir.
Q. Where do you reside?
A. Cedar Rapids, Iowa.
Q. What is your present position, business or occupation?
A. Senior vice president, Order of Railway Conductors.
Q. When did you first enter railroad work?
A. March, 1903.
Q. Just tell the court the experience you have had, both as an employee and as a representative on various boards, and offisially representing the Order of Railway Conductors, from the time you entered railroad service to the present time.
243 A. I entered the railroad service as a brakeman on the Southern Pacific. I worked in various capacities on different railroads, sometimes as a shop man, as a laborer as a mechanic helper, as a switchman, as a fore-

man, brakeman, as a conductor; various kinds of train service.

I served the Order of Railway Conductors as chairman of the local committee, as vice chairman of the general committee, as general chairman, or chairman of the general committee.

I served as vice president for about twenty-one years and as senior vice president about two years.

I prosecuted claims before the various bureaus, Bureau 3 in particular, of the United States Railroad Labor Board, which was set up under the Transportation Act of 1920.

I also prosecuted claims from different railroads, before the full board composed of nine persons, three representing the railroads, three representing the public and three representing the organization.

I also served as a member of the Western Train Service Board for about two and a half years, which was composed of eight members.

244 I also helped establish and served on the Southwestern Train Service Board as a member of it for seven or eight months.

I also served on the Board up in Canada and I put in a couple of weeks as a substitute member of the present Train Service Board, Division No. 1, First Division, National Railroad Adjustment Board.

Q. As a result of your experience, have you had occasion to consider claims of and become familiar in a general way with yard service employees throughout the various railroads in the United States?

A. Yes, generally. I have handled grievances of members of the organization, and of different organizations, throughout the United States and Canada on various railroads of various kinds, under all of the different, or many of the different contracts in existence.

Q. Mr. Nemitz, I will ask you whether or not you made any review of the decisions of the United States Railroad Administration, decisions of the Railway Board of Adjustment No. 1, during the period of July, August and September of 1919 with respect to whether or not there were any decisions involving yardmasters?

A. I have, yes, sir. I believe that I have read over every decision ever rendered by that Board.

245 Mr. Shuttleworth: It might save considerable time—I wanted to refer to certain decisions here, decision

595 and 596, and we might do as we did on some of these other matters for you and save considerable time.

Mr. Smith: The defendants won't raise any question about the authenticity of any of these decisions that you want to refer to that are taken from the official reports of the United States Railroad Administration, Director General of Railroads.

You have just handed me a book, Decision of Railroad Board of Adjustment No. 1, dated July, August and September, 1919.

We raise no question as to the authenticity or the propriety of the court taking judicial notice of any of the decisions in that publication, reserving the right to raise any question as to the relevance, and weight of the material, of course.

Mr. Hassenauer: Is that satisfactory to you, Mr. Raymond?

Mr. Raymond: That is entirely satisfactory.

Mr. Shuttleworth: For the record, might we then have these marked as exhibits; case No. 595 as Plaintiffs Exhibit 1, or would you prefer to have these lettered?

246 The Court: You might offer those in evidence and, I suppose, copies may be substituted rather than leave them?

Mr. Shuttleworth: Yes.

Mr. Smith: So they will be physically in the record.

The Court: And they will be admitted.

Mr. Shuttleworth: 595 and 596.

Mr. Smith: Have you stated exactly what it is you are offering? What are these numbers, are they cases?

Mr. Shuttleworth: We are offering Case 595 on Chicago, Burlington & Quincy Railroad; Case No. 596 on the Chicago, Burlington & Quincy Railroad, being the decisions of the Railway Board of Adjustment No. 1, under the United States Railroad Administration, Director General of Railroads, during July, August and September, 1919.

Mr. Smith: Those cases in their entirety are embraced on Pages 15 and 16 of that publication?

Mr. Shuttleworth: Yes.

The Court: Has that publication been sufficiently described for the record?

Mr. Shuttleworth: It is published by the Washington Government Printing Office. It appears on the frontis-

piece, United States Railroad Administration, Director
247 General of Railroads, Decisions, Railway Board of Adjustment No. 1, July, August and September, 1919, Washington Government Printing Office, 1919.

The Court: That sufficiently identifies it.

Mr. Shuttleworth: Would it be agreeable to substitute photostatic copies of this?

The Court: Yes.

Mr. Smith: You don't need to make them photostat copies.

The Court: They will be received.

(Said documents so offered and received in evidence were marked as Plaintiffs' Exhibits A and B, and are in words and figures as follows, to-wit:)

248 Mr. Shuttleworth: I should also like to offer in evidence a decision of the United States Railway Labor Board under the Transportation Act of 1920, which I had with me, I thought, when I left Cedar Rapids, and I don't find it. It is Decision No. 3350. I wonder if you might have that marked as Exhibit C and arrange to submit it to Counsel, to satisfy them as to its authenticity?

Mr. Smith: I don't think we would have any objection to that, if it is sufficiently identified so there will be no doubt about it.

The Court: All right.

Mr. Smith: If it is a short decision of the sort you have just referred to—it is a decision, I think you said?

Mr. Shuttleworth: That is correct; Decision 3350 of the United States Railway Labor Board under the Transportation Act of 1920.

Mr. Smith: I don't think I want to raise any question about it.

The Court: It will be admitted as Plaintiffs' Exhibit C, and each party may retain its own exhibits.

Mr. Smith: Thank you.

249 (Said document so offered and received in evidence was marked as Plaintiffs' Exhibit C, and is in words and figures as follows, to-wit:)

250 Mr. Shuttleworth: Mark this Exhibit D.

Mr. Smith: We just have one reporter, and I take it the reporter can put his initials on the various exhibits, to make up a record.

The Court: Yes.

Mr. Shuttleworth: I now offer in evidence Plaintiffs' Exhibit D, being a decision of the Southeastern Train Service Board of Adjustment, Docket No. 235.

Mr. Smith: What is this? Is this one that comes under our stipulation?

Mr. Shuttleworth: That is under the Railway Labor Act of 1926, prior to the 1934 amendments.

Mr. Smith: You will let us have a copy of that, too?

Mr. Shuttleworth: Yes.

Mr. Smith: That has already been identified?

Mr. Shuttleworth: That is correct.

The Court: It may be received.

(Said document so offered and received in evidence was marked as Plaintiffs' Exhibit D, and is in words and figures as follows, to-wit:)

251 Mr. Shuttleworth: Plaintiffs also offer in evidence Plaintiffs' Exhibit G and F, being, respectively, Docket 993 and Docket 260, and being decisions of the Eastern Train Service Board of Adjustment; also being a board set up under the Railway Labor Act of 1926 and prior to the 1934 amendments.

Mr. Raymond: That is F and G?

Mr. Shuttleworth: Yes.

Mr. Raymond: What is E, please?

Mr. Smith: These are decisions that were made before this act was passed.

I have not had an opportunity, and I won't take the time of the court to read them now, but we make no objection to authenticity with reference to any of these matters.

I think I probably should object to them on the ground of relevance and materiality, in order to preserve a proper record.

The Court: They will be admitted subject to your objection.

(Said documents so offered and received in evidence were marked as Plaintiffs' Exhibits F and G, and are in words and figures as follows, to-wit:)

252 Mr. Shuttleworth: Plaintiffs also offer in evidence Plaintiffs' Exhibits H and I, being, respectively, Decision No. 669 in Case 928 and Decision No. 363 in Case 525 of the Southwestern Regional Train Service Board of Adjustment.

Mr. Smith: Our position on that is the same, and I take it the same ruling?

The Court: The same ruling.

(Said documents so offered and received in evidence were marked as Plaintiffs' Exhibits H and I, and are in words and figures as follows, to-wit:)

253 The Court: By the way, are you through with the witness?

Mr. Shuttleworth: I have one or two questions, your Honor.

Mr. Raymond: I take it it is not necessary for me to repeat any objections?

The Court: The objections go for both.

Mr. Shuttleworth: Mark these as Plaintiffs group Exhibit J.

Mr. Smith: Are those published anywhere where we can get them?

Mr. Shuttleworth: They are a little difficult to find. That is the reason I suggested we make copies.

Mr. Smith: That will be fine.

Mr. Shuttleworth: The plaintiffs offer in evidence as Plaintiffs' group Exhibit J, a group of decisions of the Train Service Board of Adjustment for the Western Region, being Decisions Nos. 6, 20, 28, 29, 84, 117, 419, 571, 597, 692, 846, 879, 1109, 1170, 1347, 1542, 1702; 1703 to 1708, both inclusive; 1786, 1808, 1809, 1959, 2179, 2311, 2371; 2501 to 2503, both inclusive; 2542, 2759, 2819, 2948, 3118, 3449, 3613, 3622, 3673, 3768, 3911, 3920 and 4098.

Mr. Smith: I won't take time to examine them. I
254 wonder if counsel could just tell us in a word, in a general way, what they are designed to show, and what in his opinion they do show.

Mr. Shuttleworth: They are designed to show that this Board considered and passed upon the yardmasters' cases, and it is the same Board that handled the train, engine and yard service employees.

Mr. Smith: That is the same board that passed on the disputes of both of these groups?

Mr. Shuttleworth: That is right.

Mr. Smith: That was this Southeastern Division?

Mr. Shuttleworth: This group is the Western Region Train Service Board of Adjustment for the Western Region under the Railway Labor Act of 1926 and prior to the amendments of 1934.

Mr. Smith: Yes; thank you.

The Court: They will be admitted subject to your objections as materiality and relevancy.

(Said documents so offered and received were thereupon received in evidence as Plaintiffs' Group Exhibit J, and are in words and figures as follows, to-wit:)

255 Mr. Shuttleworth: On Plaintiffs' Group Exhibit K, which also consists of a group of decisions of the National Railway Adjustment Board, First Division, would you be good enough to initial them, Mr. Reporter?

Mr. Smith: May I ask whether the purpose is the same to show the first division has taken jurisdiction of certain matters?

Mr. Shuttleworth: That is one of the purposes.

We offer this exhibit, Plaintiffs' Exhibit K, consisting of these awards and dockets of the National Railway Adjustment Board; First Division, under paragraph 2 of the stipulation, being awards numbered as follows: 1274, 1603, 1648, 1649, 1896, 1897, 2364, 2490, 2491, 2713, 2970, 3609, 3610, 4117, 4548 and 4584, all of which have been initialed by the court reporter as part of Plaintiffs' Group Exhibit K.

The Court: They will be admitted subject to your objection.

(Said documents so offered and received in evidence were marked in evidence as Plaintiffs' Group Exhibit K, and are in words and figures as follows, to-wit:)

256 Mr. Shuttleworth: Now, I believe that Decision 3350 was to be marked as Exhibit C.

(Document so marked.)

Exhibit C, previously referred to, is now offered in evidence, the same appearing as Decision No. 3350, Docket No. 3403, and appearing at Page 735 of Vol. 6, entitled: "Decisions of the United States Railway Board, with addenda and interpretations," and so forth.

Mr. Smith: The same objection.

The Court: It will be admitted with the same reservations as to objections.

(Said document so offered and received in evidence was marked as Plaintiffs' Exhibit C and is in words and figures as follows, to wit:)

257 Mr. Shuttleworth: Q. Mr. Nemitz, if I understood your preliminary statement correctly, you have worked in yard service?

A. Yes, sir.

Q. Did you work as a yard conductor in the yard?

A. Yes, sir.

Q. You also worked as a road conductor, did you?

A. Yes, sir.

Q. And as a road brakeman?

A. Yes, sir.

Q. How long has it been since you actually worked as a road conductor?

A. Oh, that has been twenty-five or twenty-six years.

Q. During the last twenty-five or twenty-six years, if I understood you correctly, your time has been devoted to serving on various boards and progressing, handling grievances with reference to both conductors and yard service employees, is that true or not?

A. It is true; also brakeman, and occasionally enginemen's complaints.

Q. That has had to do with the various railroads throughout the United States and Canada?

A. That is correct.

258 Q. Mr. Nemitz, I will ask you whether or not as a result of your experience, both as an active worker for railroads, and as a result of our experience in the last twenty-five years in the various capacities which you have described, whether or not the yard service employees among railroad men has any particular or well defined meaning or understanding?

A. They have, yes. Usually they are considered men who work within the switching limits, or certain defined limits, generally referred to as switchmen, or yard limits. They perform a service such as placing cars at different industries, supplying cars of different kinds at different places within those switching or yard limits, and making up and breaking up trains, that is, they break up the incoming trains and they make up the outgoing trains, fixing them in their regular order for the handling by road crews, who will take them from one terminal to some other terminal, or some other point outside of the yard limits or switching limits.

Q. What would you say as to whether or not the class or craft of yardmasters is generally understood to be included within the term or expression of "yard service employees"?

258½ A. I would say that they fit more nearly in with the yard service employees than with any other class. They don't belong in the road service. They have no rights there. They don't belong in the clerical department. They have no rights there. Usually the yardmasters hold rights as yard foremen, or as yard helpers in some yard on the rail-

road, where they hold rights as yardmaster, and where they perform services as yardmasters.

Q. Do I understand you to mean by that, Mr. Nemitz, that yardmasters are usually promoted from yard employees?

A. Quite generally, yes, sir.

Q. And in the order of demotion in the event of lack of business, do these men who are promoted to yardmasters usually retain their seniority as a yard conductor, or yard foreman, or switch tender, or whatever craft it was they held seniority in?

Mr. Smith: I would like the record to show we object to that as immaterial.

The Court: Yes. It will be admitted subject to objection.

A. Yes.

Mr. Shuttleworth: Cross-examine.

259 *Cross-Examination by Mr. Smith.*

Q. Mr. Nemitz, you have been on various boards of one kind and another for some twenty-five or twenty-six years, I think you said?

A. Well—

Q. (continuing) As a representative of the men?

A. Twenty-five or twenty-six years, but I have served in vairous capacities on boards at different intervals for a period of twenty-five or twenty-six years, or twenty-three years. I think the first one was established in 1918. I didn't serve on that board, but I presented cases to that board for decision by it.

Q. While you were on those boards, or tribunals, I take it that the awards or decisions that you participated in would be the best evidence of what you believed at that time?

A. I think so.

Q. You concede that. Let me ask you this, first: Can you agree with the witnesses who were on the stand this morning, at least to this extent, that in railroad parlance "yard service employees" and "yardmen" and "yard crews" generally speaking mean the same thing?

A. Yes, sir.

260 Q. Now, you said you thought of yardmen, and that you understood the term to cover the people that worked within the yard, or within the switching limits, as I understood your statement?

A. That is right, such as making up and breaking up of trains, switching, and so on.

Q. In other words, I think you somewhat qualified that, didn't you? In other words, you are not telling the court that you think, for example, that these clerical people that work in the yards, or car checkers, the weighmasters, or clerks, you don't think of those as yardmen, do you?

A. No, sir.

Q. So that the terms "yard service employees," and the equivalent terms, "yardmen" and yard crews," they don't include all of the men that work within the yard, or within the switching limits, do they?

A. They would not include such as the storekeepers, or the section men, or perhaps other brakemen, or clerks, and so on. Yardmen are usually men who have to do with the making up and breaking up of trains, switching in the yard, and supervising the work of the yardmen, which would include, in my opinion, yardmasters and assistant yardmasters.

261 Q. Where you differ from the witnesses who testified this morning, I take it, is right at this point, that they say that the men who supervise that work that you have just referred to are not within the meaning of the terms, whereas, you include the men who do the work, and also the men who supervise it; that is the difference between—

A. I do. I might say, for this reason: I base it upon these facts, that every tribunal that has decided a dispute for men engaged in yard service, such as yard engineers, firemen, hostlers, hostler helpers, road conductors, trainmen and yardmen, have also decided cases for yardmasters and assistant yardmasters. Division 1, set up under, by agreement, in 1918, the very first board in existence did that. The Western Train Service Board, upon which I served did that, as evidenced by Board decisions submitted here as an exhibit. The Southwestern Train Service Board, where I served, also did so. The Eastern, the Southeastern Board did likewise, and the present Board did likewise, as evidenced by these exhibits, and in addition to that, they make this statement, that this Board, the first division, National Railroad Adjustment Board, has jurisdiction

262 in the dispute, in the dispute of those cases of yardmasters, and decided that there was no question about it, as I understand it, until approximately 1938, when, I believe, Judge Holly handled some sort of case.

Q. Now, you have stated the reasons for your view as to what these terms mean, as I understand it?

A. Yes, sir.

Mr. Smith: Now, your Honor, I move to strike that entire answer as not responsive and as not being the best evidence, and as attempting to characterize and discuss and refer to decisions which counsel on both sides have already brought to the attention of the court. Those decisions are the best evidence of what they contain, and I think the witness' reference to them ought to be stricken.

The Court: He testified, in the first place, as to his understanding of the meaning of the term, and then he gave his reasons for it. I thought perhaps both sides would want the reasons in as showing how he came to that conclusion.

Mr. Smith: I am not at all sorry to have the reason in, your Honor, but I do think—

The Court: I will let it stand subject to your objection.

263 Mr. Smith: All right, sir.

Q. The men that handle trains on the road are called the engineer, fireman, conductor and brakeman, usually, aren't they?

A. Yes, and in addition to that, they are called "road men."

Q. Yes. Now, the men that do somewhat similar work in the yard in place of the engineer out on the line, you still call the engineer in the yard, don't you?

A. Oh, yes.

Q. And the man that does the work that somewhat resembles the conductor's work out on the line is often referred to as the "engine foreman" in the yard, is he?

A. Yes; in some places. Generally, in the Western territory, he is referred to as the "engine foreman." In the Eastern territory he is referred to as a yard conductor.

Q. Now, the fireman is a fireman wherever he is, isn't he?

A. Yes; only they refer to him as a yard fireman to differentiate between a road and a yard employee.

Q. The man that does the work of a brakeman out on the line is referred to, when he does somewhat similar

264 work in the yard, as a switchman, isn't he?

A. Generally as a helper.

Q. As a helper?

A. That is, in the Western territory. Again, in the East, he is referred to as a yard brakeman.

Q. Generally speaking, it is true, as Mr. Green said this morning, is it not, that those men who work in the yard that you have referred to, the engineer and the engine foreman, and the switchman and the fireman, for many years they have had a different basis of pay from the road men, haven't they?

A. Yes; they work by the day, while the men on the road generally work by either the day or by the month.

I might say, also, that their rates differ, engineers' rates differ from the firemen; yard foremen rates differ from engineers and firemen, and differ from the helpers.

Q. They differ among themselves?

A. Differ among themselves.

Q. Because of that difference, you have thought of them for years, haven't you, as yardmen and road men, or men out on the line?

A. Well, yardmen are men that work within the defined switching limits, or yard limits.

265 Q. And they have those different rates of pay?

A. They have different rates between themselves, and different rates and different methods of compensation than they have on the road, and have different rates than the yardmaster or assistant yardmaster, also?

Mr. Smith: That is all.

The Court: Any redirect examination? Mr. Raymond?

Cross-Examination by Mr. Hassenauer.

Q. Have you ever been appointed to sit as a member of the First Division of the National Railroad Adjustment Board?

A. Not appointed; I acted as a substitute on that board in the absence of our member serving regularly on that board.

Q. You sat on that board and entered into discussions and decisions of cases brought before you as a substitute member, did you not?

A. I did.

Q. You testified that you were a member of some of these other adjustment boards which were established prior

266 to the Act of 1926 and subsequent to the enactment of that act by Congress. As I understand your testimony disputes between carriers and train and yard service employees, including those of yardmasters, were heard by

one particular board to the exclusion of disputes between carriers and other crafts and classes of employees such as clerks, telegraphers, and what we generally know as the shop crafts, is that correct?

Mr. Smith: Just a minute. In the first place, I think the witness ought not to be permitted to testify. This is not cross-examination.

The Court: That is quite a big question.

Mr. Smith: Besides I object to it on the ground it is wholly immaterial.

I would like to say a word about that. We are here because Division 1 and Division 4 have had different views as to who ought to have jurisdiction of yardmasters. That is the reason we are here, and that is the only reason we are here.

Now, Division 4 has decided some of these cases, Division 1 has decided some, and apparently each thought they ought to decide them all. That has given rise to the controversy which brings us here.

267 Now, I think we are lifting ourselves by our bootstraps if we try to show to this court what these words mean that are in the statute by emphasizing through this witness, or otherwise, the different views that these divisions have taken, which caused us to come here.

Over and above all that, both counsel have had great liberty in referring to any decisions that they wanted to refer to. That is the best evidence of what these boards have done. We have put in many for quite different purposes, and my friends on the other side have put in many.

Why try to get the witness to testify to what the boards have done when the only thing, officially, they have done is speak through their decisions? Like your Honor, they don't talk casually on the stretch; they speak through their decisions.

The Court: With the decisions in, is it necessary to have the witness testify on that subject?

Mr. Hassenauer: I will ask this question:

Q. As a member of these Federal Adjustment Boards, other than the National Railroad Adjustment Board, did you, as a board, decide any disputes involving disputes by the clerks organization?

A. No.

268 Mr. Smith: I object to that. They can bring in any decision they want.

The Court: He said no. I will let it stand.

Cross-Examination by Mr. Raymond.

Q. You don't mean to leave the impression the yardmasters are drawn from the ranks of the people you referred to as yard men?

A. There are some exceptions [illegible] generally speaking, I think they are promoted from that class.

Q. That varies a great deal in various sections of the country, doesn't it?

A. My general experience is they are promoted from the yard men.

Q. There are osme sections where a great many come from the ranks of clerks and inspectors, and so forth?

A. Only a few, to my knowledge.

Mr. Raymond: That is all.

269 *Redirect Examination by Mr. Shuttleworth.*

Q. I would like to ask one question to make clear: When we speak about road men and yard men, when a road man, or a crew, operating a train, for example, that starts off, perhaps, from Cedar Rapids and comes into the yard at Chicago, can you explain to the court whether or not, at what point that road crew comes under the jurisdiction of the yardmaster?

A. When it comes within side of the switching limits, or the yard limits.

Mr. Shuttleworth: I believe that is all.

Mr. Smith: No further questions.

Mr. Shuttleworth: That is all.

(Witness excused.)

Mr. Shuttleworth: The plaintiff rests, your Honor.

270 The Court: Rebuttal?

WILLIAM H. BARBOUR, called as a witness herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hassenauer.

Q. What is your name, please?

A. William H. Barbour.

Q. And where do you live?

A. 7351 North Damen Avenue, Chicago.

Q. By whom are you employed?

A. Chicago, Milwaukee & St. Paul Railroad.
Q. In what capacity?
A. Yardmaster.
Q. How long have you been in that position?
A. About three years.
Q. Prior to that time, were you engaged by that railroad in the yards as a yard service employee?
A. Yes, sir.
Q. Then subsequently you were promoted to the position of yardmaster, which you now occupy?
A. Yes, sir.
Q. I will ask you whether or not the promotion from
271 yard service employee to yardmaster is in accordance with the scheduled agreement in effect on the property of that carrier?
A. Yes, sir.
Q. Also whether or not when a yardmaster is promoted from one class or craft, does he retain his seniority in that craft or class from which he has received his promotion?
A. Yes, sir.
Mr. Smith: Just a moment. I object to that as not the best evidence. If Mr. Hassenauer wants to offer this agreement that this gentleman is undertaking to testify about, I won't make any objection to it; but, I do think we ought to have the agreement rather than the comments of the witness on the agreement.
The Court: I am wondering; is the agreement acceptable?
Mr. Smith: Oh, yes.
The Court: If the agreement is here, it is all right. It is not always necessary to put the original document in evidence. Sometimes secondary evidence can be offered. If the agreement is here, I think it might be put in evidence.
Mr. Hassenauer: I don't have the Milwaukee agreement.
272 Mr. Smith: It is perfectly easy to get it.
The Court: If it can be obtained, let the agreement be put in evidence, by agreement of the parties.
Mr. Hassenauer: All right. That is all.
Mr. Smith: I want that agreement pretty carefully identified. We might ask this witness to identify the exhibit for us.

Cross-Examination by Mr. Smith.

Q. Mr. Barbour, what is this agreement you have been referring to? Will you identify it so there will be no mistake on the record as to what the agreement is, as to what agreement is referred to?

A. It is an agreement you will be promoted from the ranks of the seniority list to yardmaster.

Q. What section of the agreement is that?

A. I couldn't tell you what section it is.

Mr. Raymond: What agreement is it?

The Court: What is the date of the agreement?

Mr. Raymond: Who are the parties to it?

The Court: The agreement should be identified some way.

Mr. Smith: Can we do this, your Honor? Can we
273 have an understanding with Mr. Hassenauer that within three days he will submit to the reporter and submit to us these seniority excerpts from this particular existing agreement that he has asked the witness to testify about?

The Court: How about that Mr. Hassenauer?

Mr. Smith: How many of those provisions are there in there that relate to this matter of promoting people from yard men to yardmasters? Is there just one provision in this agreement?

Mr. Hassenauer: Just one short paragraph.

Mr. Smith: That will be the paragraph you will put in, isn't it?

Mr. Hassenauer: Yes.

Mr. Smith: We object on the ground it is immaterial, not otherwise.

Mr. Raymond: Those excerpts will show who made the agreement and when?

Mr. Hassenauer: Yes. It will be marked Labor Member's Exhibit A.

The Court: And received in evidence.

(The said documents so offered and received in evidence were marked Labor Member's Exhibit A, and are in words and figures as follows, to-wit:)

274 EDWARD T. JORDAN, called as a witness herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hassenauer.

Q. State your name.
A. Edward T. Jordan.
Q. Where do you reside?
A. 804 North Oak Park Avenue, Oak Park, Illinois.
Q. By whom are you employed?
A. Order of Railway Conductors.
Q. In what capacity?
A. General Chairman of the Grievance Committee, Chicago & North Western Railway.
Q. You have heard the testimony of Mr. Barbour with reference to the promotion of yardmasters from yard men: Does that rule obtain on the lines of the Chicago & North Western Railway?
Mr. Smith: The same objection, your Honor.
The Witness: It does.
Mr. Hassenauer: Q. I now hand you—
Mr. Smith: Just a minute, please.
The Court: He is talking now about a general custom. I suppose that is admissible.
275 Mr. Smith: He asked whether it obtained on the North-Western Railway.
The Court: What is the objection?
Mr. Smith: The objection is that it is not the best evidence. I am perfectly willing to have the seniority rule in here.
The Court: He asked the general custom. If there is a general custom and no agreement the custom would be admissible.
Mr. Smith: I think so.
The Court: If there is an agreement, the agreement should be put in evidence.
Mr. Hassenauer: This will be introduced on behalf of the Labor Members. I don't know what exhibit number to give this.
The Court: Let it be Labor Members' Exhibit B.
Mr. Hassenauer: This is an excerpt from an agreement between the Chicago & North Western Railway Company and Brotherhood of Railroad Trainmen, effective August

21, 1935. I am reading from Rule 12 entitled "Seniority Rights," Subdivision B, appearing on Page 82 of that agreement:

"The right to preference of work and promotion will
276 be governed by seniority in service. The yard man oldest in service will be given the preference, if competent. In the appointment of yardmasters and assistant yardmasters the senior yard men will, in all cases, be given full and unprejudiced consideration. Yard men appointed to position of yardmaster or assistant yardmaster in their seniority district will not forfeit seniority as yard men while so assigned."

Mr. Smith: No objection to that except on the ground of relevancy.

The Court: All right.

Mr. Raymond: I want to cross-examine a little bit about it, or ask some question or two about it. I don't know whether I will depend on this witness or Mr. Hassenauer.

The Court: Ask Mr. Hassenauer; maybe you can agree.

Mr. Raymond: Do you know whether this agreement—how was it identified, Labor Members' Exhibit B? Do you know whether it is in effect now or not?

Mr. Hassenauer: It is.

Mr. Raymond: It is not, so far as yardmasters are concerned?

Mr. Hassenauer: You are asking the question and I
277 am telling you it is in effect so far as railroad trainmen are concerned.

Mr. Raymond: You are not suggesting the Brotherhood of Railroad Trainmen represent yardmasters on the North Western at this time?

Mr. Hassenauer: We have an agreement which protects yardmasters in regard to their promotion.

Mr. Raymond: That is nice of you, but you are not contending the Brotherhood of Railroad Trainmen is the bargaining agency for the yardmasters on the North Western line?

Mr. Hassenauer: No.

Mr. Raymond: It can be agreed the American Supervisory Association does represent the yardmasters on the North Western line?

Mr. Hassenauer: That is right.

Mr. Raymond: All right.

Mr. Hassenauer: That is all.

Mr. Smith: We have nothing further.

288 And afterwards on, to wit, the 9th day of June, 1944, there was filed in the Clerk's office of said Court a certain Memorandum of the Honorable William H. Holly, District Judge, in words and figures following, to wit:

289 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—3788) * * *

MEMORANDUM.

This is an action for a declaratory judgment in which all the parties are asking the court to determine whether under the terms of the Railway Labor Act, 45 U.S.C. Ch. 8, disputes between Railroad yardmasters and the employing railroad go to the first or fourth division of the Adjustment Board created by that Act.

The Adjustment Board is composed of representatives of railroads and of the national organizations of railroad employees and the Act, Sec. 153, First, requires the parties in cases of dispute that cannot be settled in the usual way by negotiation to submit such disputes to the Adjustment Board. By subdivision (h) of that section it is provided that the board shall be composed of four divisions, the first division to have jurisdiction over "disputes involving train- and-yard-service employees of carriers; that is, engineers, firemen, hostlers and outside hostler's helpers, conductors, train men, and yard service employees." The fourth division is given jurisdiction "over disputes involving employees of carriers directly or indirectly engaged in the carriage of passengers or property by water and all other employees of carriers over which jurisdiction is not given to the
290 first, second or third divisions. We are not concerned here with the jurisdiction of the second or third divisions as it is agreed by all the parties to the case that either the first or fourth division has jurisdiction of disputes involving yardmasters.

The plaintiffs are certain national railway labor unions and their officers. Ten of the defendants are the members of the first division of the Adjustment Board, five representing carriers and five representing national railway labor organizations. The remaining six are members of the fourth division of the board, three representing carriers and three representatives of Maritime Unions.

Plaintiffs contend that the first division has jurisdiction of yardmasters disputes. The defendant carrier members of the first and fourth division take the position that jurisdiction is vested in the fourth division. The Great Northern Railway Company, the Southern Pacific Company and the Railroad Yardmasters of America (a labor organization of railroad yardmasters), intervening defendants, also argue that the fourth division has jurisdiction of such disputes.

First—it is contended by the Railroad Yardmasters of America that the question has been settled by a decree of this court entered in chancery proceeding No. 16031 on July 11, 1938, and that such decree "was and is an adjudication in rem binding on plaintiffs and all other parties interested and finally settling and adjudicating the issues raised and the rights sought to be declared by the petition for declaratory judgment herein."

It is true that the writer of this memorandum did enter a decree in said chancery proceeding in which it was held that yardmasters were not included in any of the classes of employees of whose disputes jurisdiction is given by the Act in question to the first, second or third divisions and that the fourth division had jurisdiction to hear and
291 adjudicate disputes involving yardmasters. The decree enjoined and commanded the fourth division to docket, hear, determine and enter awards on three ex parte submissions involving yardmasters theretofore filed with said fourth division, but I am of the opinion that the judgment entered in that case does not bind the court or the parties in this or in any other proceeding than the one in which the decree was entered.

In that case the petition for mandamus was filed by the Railroad Yardmasters of America against the members of the fourth division of the National Railroad Adjustment Board, praying that an order be entered commanding them to hear and determine certain disputes mentioned in the petition. Summons was issued, the defendants appeared and filed an answer admitting that they were members of said fourth division and that they were of the opinion that said division had jurisdiction of said disputes. Thereupon the decree above mentioned was entered *by consent of the parties.*

The writer does not have any recollection of the case but is certain that there was no hearing and that the decree

was entered without any examination of the law or the facts but as a matter of course as in any other case where the parties had agreed and consented to the entry of a particular decree. The court was not advised that there was a public question involved or that anyone aside from the parties had any interest in the question presented. It is a little difficult to understand why the suit was instituted or why the parties asked the court to enter a decree if they were agreed as to the law and facts. There was no reason for the submission of the case to the court. If it was intended to get a decree which should be determinative of the issues as to all the world, counsel owed the duty to the court of so informing it. In my opinion I am not bound by that decree in this or any other case where there is a real contest, a decree which it appears I was induced to enter by collusion of the parties and without any con-
292 sideration of the issues involved.

Further, that case was not an action in rem. It had none of the characteristics of such an action. An action in rem is a proceeding against a thing or property and the judgment binds all the world. Would counsel contend that my judgment in that case is binding upon all other tribunals, including the Supreme Court of the United States, which may be called upon to determine whether the first or fourth division have jurisdiction of disputes involving yardmasters?

Second: We come now to the merits of the case. The Act gives the first division jurisdiction of "yard-service employees." If yardmasters are yard service employees the first division has jurisdiction; if not jurisdiction is in the fourth division.

The duties of a yardmaster as stated in the stipulation of the parties are as follows:

"The duties of yardmasters vary at different terminals, because of the nature and quantity of the traffic passing through or assembled, distributed, and interchanged at different terminals. Depending upon the size and nature of the yard, the yardmaster's duties may be performed by him in person or they may be exercised under his supervision by as many as fifty or more subordinate employees. The yardmaster is responsible for all work necessary in the running of the yard, in the sense that he must see that such work is done and is done properly, whether the work is yard service, train and engine service, clerical service,

communication service, maintenance service, repair service, or, in some cases, dealing with patrons in the matter of shipments arriving at, passing through or departing from the yard. A yardmaster, however, is not permitted actually to perform the work of certain classes of employees under his supervision, such as passing signals, riding cars to a stop, and throwing switches. His duties with respect to the physical movement of trains and engines, maintenance, and repair are purely supervisory."

293 The yard is a system of railroad tracks within defined limits over which movements of engines and cars not authorized by time table or train order may be made. The work performed in a yard includes switching, making and breaking up of trains, storing cars, moving trains into, out of and through the yard, inspecting cars and freight, repairing cars, maintaining track and other fixed equipment, sending and receiving messages by telephone and telegraph, keeping records and making reports. The employees who perform such work "include those known as yard men, that is, switch or yard foremen, yard helpers, and switch tenders, and employees in train and engine service, such as engineers, firemen, hostlers, conductors, brakemen, flagmen, and baggagemen; they also include clerks, telephone and telegraph operators in the yard offices, tower men operating interlocking switches, maintenance-of-way foremen and laborers, signal department forces engaged in the maintenance of yard signal plants and car inspectors and repairers."

It is also stipulated that all such yard men and other employees performing work in a yard are directed and supervised in their work by a yardmaster, with the aid, if necessary, of one or more yardmasters. Practically, it seems, the yardmaster is superintendent of the yard.

All of the parties seem to agree that the term yard service employee has come to have a well defined meaning among those engaged in railroad operation, but they differ as to the meaning so acquired. Plaintiffs say that it includes yardmasters, while the Railroad Yardmasters of America, and the defendant carrier and carrier's representatives, say that it does not.

The defendants mentioned called as witnesses, Thomas L. Green, the general manager of the Indiana Harbor Belt Railroad, which operates a number of yards and whose work is very largely done in yards, Mr. Edmund G.

294 Kiesele, superintendent of terminals of the Chicago, Milwaukee & St. Paul Railroad, and Morris E. Sommerlott, assistant personnel manager of personnel for the Southern Pacific Company, who testified that the term yard service employees referred to employees who make up and break up trains in the yard, switching cars, placing and pulling of cars at industries within those yards, namely, engineers, firemen, conductors or engine foremen, yard brakemen, switchers of helpers; that the term was equivalent to "yard crew" or "yard men" and that it did not include yardmasters.

For the plaintiff the senior vice president of the Order of Railway Conductors testified that yard men are considered "men who work within the switching limits, or certain defined limits, generally referred to as switchmen, or yard limits. They perform a service such as placing cars at different industries, supplying cars of different kinds at different places within those switching or yard limits, and making up and breaking up trains, that is, they break up the incoming trains and they make up the outgoing trains, fixing them in their regular order for the handling by road crews, who will take them from one terminal to some other terminal, or some other point outside of the yard limits or switching limits."

Asked the direct question whether the class or craft of yardmasters was generally understood to be within the term or expression "yard service employee," he repied, "I would say that they fit more nearly in with the yard service employees than with any other class. They don't belong in the road service. They have no rights there. They don't belong in the clerical department. They have no rights there. Usually yardmasters hold rights as yard foremen, or as yard helpers in some yard on the railroad, where they hold rights as yardmaster, and where they perform services as yardmasters."

295 Three witnesses testified that among railroad operatives the term yard service employee did not include yardmasters. The one witness who testified for plaintiffs did not deny this. All he said was that "they fit more nearly in with the yard service employees than any other class." That certainly is not a statement they are members of that class. It implies that they are not, that they are not in any class mentioned in the statute but are more nearly related to the class of yard service employees than any other class. Clearly as to the direct evidence introduced on this subject the preponderance is against the plaintiffs.

Plaintiffs say, however, that the statute is so clear and unequivocal in its meaning that "there is no ambiguity which would either require or permit extrinsic evidence as to the intent of Congress." But evidence tending to show the meaning of a word or phrase of a statute is not *extrinsic* evidence as to the intent of the legislature. To know the intent of the legislature one must know the meaning to be given to the terms employed. Words of common use are given their ordinarily understood meaning, and technical words are to be taken in the technical sense, that is, the meaning understood by practitioners in the particular field. The direct evidence here is that among those engaged in operating railroads, yard service employee means a person actually engaged in the performance of the operations going on in a railroad yard and does not include yardmasters.

Prior to the passage of the present Railway Labor Act Congress had passed two other acts containing provisions for the creation of Boards of Adjustment for the settling of labor disputes, the Transportation Act of 1920 (Ch. 91, 41, Stat. 469, Title III) and the Transportation Act of 1926 (Ch. 347, 44 Stat. 577, Title III) but in each case the board was created by agreement of the parties and it had such jurisdiction as the parties gave it by the terms of the agreement. I do not think that the fact that by those agree-
296 ments the disputes of both yard men and yardmasters were heard by the same tribunal is helpful in determining the meaning of the term yard service employees in the present statute.

Prior to the decision of this court in Case 16031 several disputes involving yardmasters had been heard and determined by the first division. That fact might be quite persuasive as to the meaning to be given the term yardmasters were it not that the fourth division had also heard and determined certain such cases. Each division seemed to be of the opinion that it had jurisdiction of such disputes. Further, many of the disputes involved primarily the rights of yard men, men who clearly came under the classification of yard service employees.

It is the judgment of the court that the fourth division has jurisdiction of disputes involving yardmasters. The parties may present drafts of furnishing of fact, conclusions of law and judgment order at their convenience.

Holly,
Judge.

296½ And afterwards, to wit, on the 12th day of July, 1944, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before Honorable William H. Holly, District Judge, appears the following entry, to wit:

297 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—3788) * *

ORDER OF SUBSTITUTION.

It has been made to appear to the Court that the following changes have occurred in the membership of the First and Fourth Divisions of the National Railroad Adjustment Board:

1. O. E. Swan has become a carrier member of the First Division, succeeding the defendant, E. W. Fowler, resigned;

2. M. G. Leach has become a labor member of the First Division, succeeding the defendant, R. E. Edrington, resigned;

3. H. J. Reeser has become a carrier member of the Fourth Division, succeeding the defendant, E. J. Hamner, resigned;

4. J. W. Cox has become a carrier member of the Fourth Division, succeeding R. P. Travis, resigned, who had previously succeeded the defendant, F. A. Coile, upon his resignation;

298 5. E. W. Fowler has become a carrier member of the Fourth Division, succeeding the defendant, E. Murrin, deceased; and

6. W. O. Holmes has become a labor member of the Fourth Division, succeeding the defendant, J. H. Blake, resigned.

It Is Therefore Ordered:

The aforesaid O. E. Swan, M. G. Leach, H. J. Reeser, J. W. Cox, E. W. Fowler (as a carrier member of the Fourth Division), and W. O. Holmes are hereby substituted as parties defendant in this action in place of, respectively, the originally named defendants, E. W. Fowler (as a carrier member of the First Division), R. E. Edrington, E. J. Hamner, F. A. Coile, E. Murrin, and J. H. Blake.

Enter:

Holly,

Dated July 12, 1944. *District Judge.*

298 And afterwards, to wit, on the 20th day of July, 1944, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

299 IN THE DISTRICT COURT OF THE UNIRED STATES

* * (Caption—3788) * *

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECLARATORY JUDGMENT.

The action having been tried by the Court without a jury and the court having heard the witnesses and considered the evidence, oral and documentary, introduced at the trial on behalf of the plaintiffs, the defendants and the intervenors, and having filed its opinion, which is made a part hereof, on June 9, 1944, the Court hereby
300 finds the facts, states its conclusions of law, and enters its declaratory judgment as follows:

Findings of Fast

1. This is an action for a declaratory judgment under Section 274d(1) of the Judicial Code, 28 U.S.C., Sec. 400(1). Plaintiffs are two voluntary, unincorporated associations of railroad employees, national in scope, and certain officers thereof; defendants are the members of the First and Fourth Divisions of the National Railroad Adjustment Board. Intervening defendants are the Great Northern Railway Company and the Southern Pacific Company, rail carriers, and the Railroad Yardmasters of America, a voluntary, unincorporated association of railroad employees, national in scope. Plaintiffs, defendants, and the intervening defendants all pray for a declaratory judgment construing Second 3 First (h) of the Railway Labor Act, 45 U.S.C., Sec. 153 First (h), in so far as it relates to disputes involving railroad yardmasters.

2. Section 3 First (i) of the Railway Labor Act, as amended in 1934, provides that "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules,

or working conditions" shall be handled on the property of the carrier concerned and, if unadjusted, may be referred to "the appropriate division of the Adjustment Board."

Section 3 First (h) of said statute provides as follows:

301 "(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, train-men and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car-men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids, and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees."

3. Prior to August, 1941, the First Division of the National Railroad Adjustment Board had heard disputes involving yardmasters and had rendered awards in such dis-

putes. Since August, 1941, the five carrier members and the five labor members of the First Division have been deadlocked on the question whether the statutory definition of the jurisdiction of the First Division, as contained in Section 3 First (h) of the Railway Labor Act, includes
302 disputes involving yardmasters. As a result, yardmasters' disputes docketed with the First Division remain unconsidered and unadjusted. On March 21, 1938, the Railroad Yardmasters of America, acting for three of its yardmaster members, filed with the Fourth Division of the National Railroad Adjustment Board an ex parte submission of disputes involving said yardmaster members. A deadlock developed on March 24, 1938, between the carrier members and the labor members of said Fourth Division over the question of the jurisdiction of that division to hear disputes involving yardmasters. Thereafter, on July 11, 1938, this court, in Chancery No. 16031, upon petition of the Railroad Yardmasters of America and the particular yardmasters involved in said disputes, entered a decree ordering the Fourth Division to hear those disputes, and since that time the disputes involving yardmasters belonging to the Railroad Yardmasters of America have been submitted to and adjusted by the Fourth Division. The plaintiff labor organizations have continued to submit to the First Division the disputes of their yardmaster members, although the aforesaid deadlock in the First Division has prevented consideration of such disputes.

4. A yardmaster is a railroad employee who supervises operations in a railroad yard. A railroad yard is a system of tracks within defined limits, over which movements of engines and cars not authorized by timetable or train order may be made, subject to prescribed signals and rules or special instructions.

5. The work performed in a railroad yard includes switching, making and breaking up trains, storing cars, moving trains into, out of, and through the yard, inspecting cars, maintaining track and other fixed equipment, sending and receiving messages by telephone and telegraph, keeping records, and making reports. Over all such work and the employees engaged therein the yardmas-
303 ter has general supervision. Depending upon the size and nature of the yard, the yardmaster's duties may be performed by him alone or with the aid of one or more assistant yardmasters.

6. Yardmasters and assistant yardmasters have direct supervision over the employees, known as yard men or yard-service employees, who are engaged in making up, breaking up, and switching trains within yards and industrial districts assigned thereto. The necessary clerical work involved in the operation of a railroad yard requires the keeping of many records and the making of numerous reports. The employees who perform such clerical work, including office clerks, car checkers, yard checkers and weighmasters, are employed inside the limits of the yard and, like the yard men, are directly under the yardmaster's supervision. Yardmasters and assistant yardmasters do not and may not perform the work of yard men, their duties with respect to switching and making and breaking up trains being purely supervisory; they may perform some clerical work if their entire time is not taken up with the direction and supervision of yard men and other employees working in yards.

7. Yardmasters and assistant yardmasters are not train-service or yard-service employees of rail carriers; that is to say, they are not engineers, firemen, hostlers, outside hostler helpers, conductors, trainmen, or yard-service employees.

8. The terms "yard service" and "yard-service employees" are not terms in general and common usage in the English language.

9. The terms "yard service" and "yard-service employees" are and have been for many years, both prior
304 and subsequent to the amendment of the Railway Labor Act in 1934, technical terms in railroad usage, with definite meanings clearly understood by persons familiar with that usage.

10. The term "yard-service employees," as used in Section 3 First (h) of the Railway Labor Act with reference to the jurisdiction of the First Division of the National Railroad Adjustment Board, was taken by Congress from railroad usage and was introduced into the said statute upon its amendment in 1934 as a railroad term having the meaning customarily assigned to it in railroad parlance.

11. At the time of the amendment to the Railway Labor Act referred to in the preceding paragraph 10, for many years prior thereto, and since that time, the term "yard-service employes" referred, and has referred, solely to railroad employees engaged in making up and breaking up

trains and switching trains and cars within yard limits. Over the same period of time the term "yard service" has denoted the work performed by such employees, who include engineers, firemen, conductors or engine foremen, yard brakemen or switchmen, and switchtenders.

12. During the period of time referred to in the preceding paragraph 11, the terms "yard service" and "yard work" have been synonymous and have been used interchangeably in railroad parlance, and the terms "yard-service employees" and "yard men" have been synonymous and used interchangeably in railroad parlance.

13. Railroad usage, as evidenced by the testimony of experienced railroad officials and representatives of railroad employees, has never included yardmasters and 305 assistant yardmasters within the meaning of the terms "yard-service employees" or "yard men," and yardmasters and assistant yardmasters have never been regarded as yard-service employees or yard men.

Conclusions of Law.

1. This is a case of actual controversy, and the court has jurisdiction of the subject-matter of this action and of the parties hereto.

2. The definitions of the jurisdiction of the First, Second, and Third Divisions of the National Railroad Adjustment Board, as quoted in paragraph 2 of the foregoing findings, do not include disputes involving yardmasters and assistant yardmasters, and such disputes are therefore not subject to the jurisdiction of said First Division or of said Second or Third Division.

3. The decree entered by this court in United States ex rel. Railroad Yardmasters of America, et al., *vs.* National Railroad Adjustment Board, Fourth Division, et al., Chancery No. 16031, is not res adjudicata and does not bind this court or the parties in this or in any other proceeding than the one in which the decree was entered.

4. Disputes involving yardmasters and assistant yardmasters are included in the definition of the jurisdiction of the Fourth Division of the National Railroad Adjustment Board by the following language from Section 3 First (h) of the Railway Labor Act:

"Fourth division: To have jurisdiction over disputes involving • • • all other employees of carriers over

which jurisdiction is not given to the first, second, and third divisions."

Disputes involving yardmasters and assistant yard-
306 masters are therefore subject to the jurisdiction of said Fourth Division.

5. Plaintiffs' petition should be denied, and judgment should be entered for the defendant carrier members of the First and Fourth Divisions of the National Railroad Adjustment Board and the intervening defendants on their counterclaims for a declaratory judgment that disputes involving yardmasters are subject to the exclusive jurisdiction of the Fourth Division of the National Railroad Adjustment Board.

It Is Therefore Ordered, Adjudged, and Decreed:

The rights and other legal relations of the parties are as follows:

The Fourth Division of the National Railroad Adjustment Board has exclusive jurisdiction, under the terms of Section 3 First (h) of the Railway Labor Act, as quoted in paragraph 2 of the foregoing findings, to hear disputes involving yardmasters and assistant yardmasters employed by rail carriers and to render awards in such disputes. The First Division of the National Railroad Adjustment Board has no jurisdiction over such disputes and is not entitled to hear and render awards in the same.

Enter: Holly.
District Judge.

Dated July 20, 1944.

307 And on the same day, to wit, the 5th day of September, 1944, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal, in words and figures following, to wit:

308 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois

Eatsern Division

The Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President, *Plaintiffs.* *vs.* O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, Fred Lewis, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes, and J. M. Fox, *Defendants.*	Civil Action No. 3788

NOTICE OF APPEAL.

Notice is hereby given that the Order of Railway Conductors of America and the Brotherhood of Railroad Trainmen, voluntary unincorporated associations, plaintiffs above named, do hereby appeal to the United States Circuit Court of Appeals for the 7th Circuit from the order, judgment and decree of the court entered in this cause on July 20, 1944, that the Fourth Division of the National Railroad Adjustment Board has exclusive jurisdiction, under the terms of Section 3, First (h) of the Railway Labor Act, to hear disputes involving yardmasters and assistant yardmasters and to render awards in such dis-

putes and that the First Division of the National Railroad Adjustment Board has no jurisdiction over such disputes and is not entitled to hear and render awards in the same.

V. C. Shuttleworth,
W. A. Endle,
E. L. Gordon,
Attorneys for Plaintiffs.

Chicago, Illinois,
August 31, 1944.

Of Counsel:
E. L. Gordon,
100 West Monroe Street,
Chicago, Illinois.

309 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois

Eastern Division

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said court, do hereby certify that on the 7th day of September, 1944, in accordance with Rule 73 (b) of the Rules of Civil Procedure for Distiret Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Messrs: John Knox, 10 S. La Salle Street, Chicago, Ill.
Sidney H. Prince, Jr., 220 S. State Street, Chicago, Ill.
Leo J. Hassenauer, 105 W. Adams Street, Chicago, Ill.
Poppenhusen, Johnston, Thompson & Raymond, 11 S. La Salle Street, Chicago, Ill.
John A. Sheean, 208 S. La Salle Street, Chicago, Ill.
Bryce L. Hamilton, 38 S. Dearborn Street, Chicago, Ill.
Sidley, McPherson, Austin & Burgess, 11 S. La Salle Street, Chicago, Ill.

Roy H. Johnson,
Clerk.

(Seal)

310 And on the same day, to wit, the 5th day of September, 1944, came the Plaintiffs-Appellants by their attorneys and filed in the Clerk's office of said Court their certain Bond on Appeal, in words and figures following, to wit:

311 Bond No. 4743113.

Know All Men by These Presents:

That we, the Order of Railway Conductors of America, a voluntary unincorporated association, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President, and Brotherhood of Railroad Trainmen, a voluntary unincorporated association, A. F. Whitney, President, and S. R. Harvey, Assistant President, as Principals, and Fidelity & Deposit Company of Maryland, a corporation licensed to do business in the State of Illinois, as surety, are held firmly bound unto O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holves and J. M. Cox, in the penal sum of Two Hundred Fifty Dollars ($250.00), for the payment of which well and truly to be made we bind ourselves and our successors, jointly and severally, by these presents.

Witness our hands this 29th day of August, A. D. 1944.

The Condition of the Above Obligation Is Such that, Whereas the said O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox, individually, and as members of the National Railroad Adjustment Board, did, on July 20, 1944, have entered in their favor a certain final order, judgment and decree in an action in the District Court of the United States, for the Northern District of Illinois, Eastern Division, No. 3788, entitled "The Order of Railway Conductors of America, et al, plaintiffs, *vs.* O. E. Swan, et al, defendants" in and by the terms of which a declaratory judgment was entered providing that the Fourth Division of the National Railroad Adjustment Board has exclusive jurisdiction, under the terms of Section 3, First (h) of the Railway Labor Act, to hear disputes involving yardmasters and assistant yardmasters and to render awards in such disputes and that the First Division of the National Railroad Adjustment Board

has no jurisdiction over such disputes and is not entitled to hear and render awards in the same; and, Whereas the said plaintiffs have perfected an appeal to the Circuit Court of Appeals for the 7th Circuit by filing in the District Court on this date a Notice of Appeal;

Now, therefore, if the said Principals, plaintiffs in said cause, shall duly prosecute said appeal with effect, and moreover pay the amount of costs if the appeal is dismissed or the said judgment affirmed for any costs as may be awarded by said Circuit Court of Appeals if the judgment be modified, and to pay all costs on appeal as may be entered against said appellants; then the above obligation is said to be void, otherwise to remain in full force and effect.

The Order of Railway Conductors of America, a voluntary unincorporated association, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President, snd

Brotherhood of Railroad Trainmen, a voluntary unincorporated association, A. F. Whitney President, and S. R. Harvey, Assistant President, as Principals,

By F. H. Nemitz,
Attorney-in-Fact.

Fidelity & Deposit Company of Maryland,

By Julian S. Neal,
Agent and Attorney-in-Fact.

(Seal)

Signed and delivered
In presence of:
Leo J. Hassenauer,
E. C. Klopf.

311½ State of Illinois, } ss.
County of Cook. }

I, Ronald W. Fuermann, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Julian S. Neal, Agent and Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, who is personally known to me, appeared before me this day and acknowledged that he signed, sealed and delivered the foregoing instrument as his free and voluntary act as Agent and Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, and as the free and voluntary act of the Fidelity and Deposit Company of Maryland, for the uses adn purposes therein set forth.

Given under my hand and Notarial Seal this 29th day of August, A. D. 1944.

Ronald W. Fuermann,
(Seal) *Notary Public.*

My commission expires February 16th, 1948.

312 And afterwards on, to wit, the 5th day of September, 1944, came the defendants, F. J. Williams, et al, by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal, in words and figures following, to wit:

313 IN THE DISTRICT COURT OF THE UNITED STATES

for the Northern District of Illinois

Eastern Division

The Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President,

Plaintiffs.

vs.

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, Fred Lewis, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes, and J. M. Fox,

Defendants.

Civil Action No. 3788

NOTICE OF APPEAL.

Notice Is Hereby Given That F. J. Williams, William Bishop, Paul M. Carter, Fred Lewis and M. J. Leach, individually, and as members of the National Railroad Adjustment Board, designated as defendants above, jointly and severally with The Order of Railway Conductors of America and the Brotherhood of Railroad Trainmen, pursuant to Rule 74 of the Rules of Civil Procedure, do hereby appeal to the Circuit Court of Appeals for the 7th Circuit from the order, judgment and decree of the court entered in this cause on July 20, 1944, that the Fourth Division of the National Railroad Adjustment Board has exclusive jurisdiction, under the terms of Section 3, First (h) of the Railway Labor Act, to hear disputes involving yardmasters and assistant yardmasters and to render awards in such disputes and that the First Division of the National Railroad Adjustment Board has no jurisdiction over such dis-

putes and is not entitled to hear and render awards in the same.

Leo J. Hassenauer,
Attorney for F. J. Williams, William Bishop, Paul M. Carter, Fred Lewis and M. J. Leach.

Chicago, Illinois,
August 31, 1944.

Leo J. Hassenauer,
38th Floor, 105 W. Adams
Street, Chicago 3, Illinois.

314 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois

Eastern Division

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 7th day of September, 1944, in accordance with Rule 73 (b) of the Rules of Civil Porcedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Messrs.: V. Craven Shuttleworth, W. H. Endle, Everett L. Gordon, 100 West Monroe Street, Chicago, Ill.
John Knox, 10 So. La Salle Street, Chicago, Ill.
Sidney H. Prince, Jr., 220 So. State Street, S. 1728, Chicago, Ill.
Poppenhusen, Johnston, Thompson & Raymond, 11 So. La Salle Street, Chicago, Ill.
John A. Sheean, 208 So. La Salle Street, Chicago, Ill.
Bryce L. Hamilton, 38 So. Dearborn Street, S. 1400, Chicago, Ill.
Sidley, McPherson, Austin & Burgess, 11 So. La Salle Street, Chicago, Ill.

Roy H. Johnson,
Clerk.

(Seal)

315 And on the same day, to wit, the 5th day of September, 1944, came the defendants-appellants, F. J. Williams, et al, by their attorneys and filed in the Clerk's office of said Court their certain Bond on Appeal, in words and figures following, to wit:

316 Bond No. 4743114.

Know All Men by These Presents:

That we, F. J. William, William Bishop, Paul M. Carter, M. J. Leach and Fred Lewis, as Principals, and Fidelity and Deposit Company of Maryland, a corporation licensed to do business in the State of Illinois, as Surety, are held and firmly bound unto O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox, in the penal sum of Two Hundred Fifty Dollars ($250.00), for the payment of which well and truly to be made we bind ourselves and our successors, jointly and severally, by these Presents.—

Witness our hands and seals this 29th day of August, A. D. 1944.

The Condition of the Above Obligation is Such That Whereas the said O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox, individually, and as members of the National Railroad Adjustment Board, did, on July 20, 1944, have entered in their favor a certain final order, judgment and decree in an action in the District Court of the United States, for the Northern District of Illinois, Eastern Division, No. 3788, entitled "The Order of Railway Conductors of America, et al, plaintiffs, *vs.* O. E. Swan, et al, defendants" in and by the terms of which a declaratory judgment was entered providing that the Fourth Division of the National Railroad Adjustment Board has exclusive jurisdiction, under the terms of Section 3, First (h) of the Railway Labor Act, to hear disputes involving yardmasters and assistant yardmasters, and to render awards in such disputes and that the First Division of the National Railroad Adjustment Board has no jurisdiction over such disputes and is not entitled to hear and render awards in the same; and, Whereas the said plaintiffs have perfected an appeal to

the Circuit Court of Appeals for the 7th Circuit by filing in the District Court on this date a Notice of Appeal;

Now, therefore, if the said Principals, plaintiffs in said cause, shall duly prosecute said appeal with effect, and moreover pay the amount of costs if the appeal is dismissed or the said judgment affirmed for any costs as may be awarded by said Circuit Court of Appeals if the judgment be modified, and to pay all costs on appeal as may be entered against said appellants; then the above obligation is to be void, otherwise to remain in full force and effect.

F. J. Williams,
William Bishop,
Paul M. Carter,
M. J. Leach,
Fred Lewis, as *Principals*,
By Leo J. Hassenauer,
Attorney-in-Fact.

Sealed and delivered
in presence of:
E. C. Klopf.

Fidelity & Deposit Company of Maryland,
By Julian S. Neal,
Agent and Attorney-in-Fact.

(Seal)

316½ State of Illinois, } ss.
County of Cook. }

I, Ronald W. Fuermann, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Julian S. Neal, Agent and Attorney-in-Fact for the Fidelity and Deposit Company of Maryland, who is personally known to me, appeared before me this day and acknowledged that he signed, sealed and delivered the foregoing instrument as his free and voluntary act as Agent and Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, and as the free and voluntary act of the Fidelity and Deposit Company of Maryland, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 29th day of August, A. D. 1944.

Ronald W. Fuermann,
Notary Public.

(Seal)

My commission expires February 16th, 1948.

317 And on the same day, to wit, the 9th day of November, 1944, came the appellants by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points on Which They Rely, in words and figures following, to wit:

318 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—3788) • •

STATEMENT OF POINTS ON WHICH APPELLANTS RELY.

To O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes, and J. M. Fox:

The Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President; Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President, plaintiffs above named, and F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, and Fred Lewis, defendants above named, as appellants state that the point or points on which appellants intend to rely on the appeal are
318a the errors of the court in making and entering the Findings of Fact numbered 7 to 13, both inclusive, and in making the Conclusions of Law numbered 2, 4 and 5, and in holding and adjudicating and entering judgment that the Fourth Division of the National Railroad Adjustment Board has exclusive jurisdiction, under Section 3, First (h) of the Railway Labor Act, to hear disputes involving yardmasters and assistant yardmasters employed by rail carriers, and to render awards in such disputes, and that the First Division of the National Railroad Adjustment Board has no jurisdiction over such disputes and that it is not entitled to hear and render awards involving yardmasters, all as more specifically set forth in the Findings of Fact, Conclusions of Law, and Declaratory Judgment entered of record in this proceeding on July 20, 1944; the error of the court in its memorandum opinion filed July 9, 1944, and incorporated in and made a part of the said Findings of Fact, Conclusions of Law, and Declaratory Judgment entered July 20, 1944, with respect to each and all of the Findings of Fact and Conclusions of Law adverse to ap-

pellants, and, without in any manner limiting the foregoing, among other things the following:

(a) In holding, in said memorandum, that the decree in Cause No. 16031 "was entered by consent of the parties";

(b) The erroneous conclusion as expressed in said memorandum there was no direct conflict in the oral testimony as to whether or not a "yardmaster" was or was not within the group of "yard service employees";

318b (c) The erroneous conclusion that a "yardmaster" is a "yard superintendent" but not a "yard service employee";

(d) In holding and concluding that the Fourth Division of the Railroad Adjustment Board had, prior to the decree in Cause No. 16031, heard and determined yardmasters' cases;

(e) In considering and reaching his opinions and conclusions in said memorandum and in the Findings of Fact, Conclusions of Law, and Declaratory Judgment filed July 20, 1944, in holding and determining that the said Railway Labor Act, with respect to the jurisdiction of the First Division of the Railroad Adjustment Board, was ambiguous, and relying upon oral testimony, as to which there was a conflict, in reaching his Findings of Fact, Conclusions of Law, and Declaratory Judgment, as to the meanings of the terms therein used; and

(f) In failing to give any consideration or any weight to the "established practice" and decisions of the various boards of adjustment, as shown by the evidence, to which railroad carriers were parties, and the historical records of said boards in existence before the creation of the Railroad Adjustment Board, and subsequent thereto, which boards and the First Division of the Railroad Adjustment Board had taken jurisdiction, considered and determined cases involving yardmasters, and failing to give consideration to or considering paragraphs 23 and 25 of the Stipulation of Facts.

318c The court further erred in failing to hold and determine that "yardmasters" are "yard service employees," and that the First Division of the National Railroad Adjustment Board has exclusive jurisdiction to hear, try and determine disputes involving yardmasters, and that the Fourth Division of the National Railroad Adjust-

ment Board does not have jurisdiction to hear, try and determine disputes involving yardmasters.

Dated this 8th day of November, A. D. 1944.

V. C. Shuttleworth,
1120 Merchants National Bank Bldg.,
Cedar Rapids, Iowa,
W. A. Endle,
1322 Standard Bldg.,
Cleveland 13, Ohio,
Everett L. Gordon,
100 West Monroe Street,
Chicago, Illinois,
Attorneys for Plaintiffs.
Leo J. Hassenauer,
105 West Adams St., Chicago, Illinois,
Attorney for F. J. Williams, William Bishop, Paul M. Carter, M. J. Leack and Fred Lewis, certain Defendants.

319 And afterwards on, to wit, the 10th day of October, 1944, came the parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit;

320 In the District Court of the United States
* * (Caption—3788) * *

STIPULATION RE: USE OF RECORD IN THE UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT.

It Is Hereby Stipulated and Agreed by counsel for the interested parties in the appeal in the above entitled proceedings that the originals of the entire record in accordance with the Designation of Record in the District Court shall be certified by the Clerk of the District Court to the United States Circuit Court of Appeals for the Seventh Circuit without the necessity of making a copy of such proceedings;

It Is Further Stipulated and Agreed that an order of court authorizing the Clerk of said District Court to trans-

mit said original record, in lieu of copies, may be entered without notice and the entry of such order is hereby consented to; it being understood, however, that this Stipulation does not, nor is it intended to cover or designate the portion or parts of the record in the foregoing proceeding to be printed after the appeal has been docketed in the United States Circuit Court of Appeals, Seventh Circuit.

Dated this 6th day of October, A. D. 1944.

V. C. Shuttleworth,
W. A. Endle,
E. L. Gordon,
Attorneys for Petitioners.

Leo J. Hassenauer,
Attorney for certain Defendants.

320a Sidley, Austin, Burgess & Harper,
Attorneys for certain Defendants.

Poppenhusen, Johnston, Thompson & Raymond,
Attorneys representing Railroad Yardmasters of America, Intervener.

Winston, Strawn & Shaw,
Representing Great Northern R. R. Co., Intervener.

John Sheean,
Representing Southern Pacific R. R. Co.

321 And afterwards, to wit, on the 12th day of October, 1944, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

322 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—3788) • •

ORDER TO SEND TO THE UNITED STATES COURT OF APPEALS, FOR THE SEVENTH CIRCUIT, THE ORIGINAL RECORD FILED IN THE OFFICE OF THE CLERK OF THE UNITED STATES DISTRICT COURT.

Pursuant to the Stipulation of the parties to the appeal from the order, judgment and decree of this court entered in this cause on July 20, 1944, that the Fourth Division of the National Railroad Adjustment Board has exclusive jurisdiction under the terms of Section 3, First (h), of the Railway Labor Act, to hear disputes involving yardmasters and assistant yardmasters and to render awards in such disputes and that the First Division of the National Railroad Adjustment Board has no jurisdiction under such disputes and is not entitled to hear and render awards in the same, It Is Ordered:

That the record of the proceedings in the District Court of the United States, as set forth in the Designation of the Record and filed in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, to be certified by the Clerk of the District Court to the United States Circuit Court of Appeals for the Seventh Circuit without the necessity of making a copy of any of such record; said record consisting of pleadings, transcript of evidence, exhibits and the decree of this Court entered July 20, 1944.

And the Clerk of this court is hereby and herewith authorized and directed to transmit as a part of the record on appeal said originals as set forth in the Designation of the Record in lieu of copies thereof, except as to all orders and the decree, copies of which are to be supplied to the Clerk of this court by appellants and counsel in this case are charged with the responsibility for the safe return of the original pleadings promptly after disposition of this cause in the Circuit Court of Appeals.

Enter:

Barnes,
Judge

Dated October 12, 1944.

323 And afterwards on, to wit, the 23rd day of October, 1944, there was filed in the Clerk's office of said Court a certain Designation of Appellees and Addresses of their Attorneys, in words and figures following, to wit:

324 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—3788) * *

DESIGNATION OF APPELLEES AND NAMES AND ADDRESSES OF THEIR ATTORNEYS.

Pursuant to Rule 10 (3) of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, the following original parties to the above-entitled cause, and the following intervenors therein, file this statement of their names as appellees, together with the names and addresses of their respective attorneys, for inclusion in the record on appeal from the order entered in said cause on July 20, 1944:

O. E. Swan,
T. K. Faherty,
R. A. Knoff,
L. L. McDonald,
L. O. Murdock,
Carrier members of the First Division of the National Railroad Adjustment Board, Defendants-Appellees,
H. J. Reeser,
J. W. Cox,
E. W. Fowler,
Carrier members of the Fourth Division of the National Railroad Adjustment Board, Defendants-Appellees,
Kenneth F. Burgess,
Douglas F. Smith,
Robert Diller,
11 South La Salle St.,
Chicago 3, Illinois.
Their Attorneys.

Of Counsel:
Sidley, Austin, Burgess & Harper,
11 South La Salle Street,
Chicago 3, Illinois.

324a

Great Northern Railway Company, *Intervenor-Appellee,*
R. J. Hagman,
Hallan Huffman,
Great Northern Railway Building, St. Paul 1, Minnesota,
Bryce L. Hamilton,
1400 First National Bank Building, Chicago 3, Illinois,
Its Attorneys.

Of Counsel:
Winston, Strawn & Shaw,
1400 First National Bank Bldg., Chicago 3, Illinois.

Southern Pacific Company, *Intervenor-Appellee,*
Burton Mason,
Southern Pacific Company, 65 Market St., San Farncisco 5, California,
John A. Sheean,
208 South La Salle St., Chicago 4, Illinois,
Its Attorneys.

Railroad Yardmasters of America, *Intervenor-Appellee,*
Anan Raymond,
11 South La Salle St., Chicago 3, Illinois,
Its Attorney.

Of Counsel:
Poppenhusen, Johnston, Thompson & Raymond, 11 South La Salle Street, Chicago 3, Illinois.

Dated October 23, 1944.

325 And afterwards on, to wit, the 9th day of November, 1944, came the parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit:

326 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—3788) • •

STIPULATION.

It Is Hereby Stipulated and Agreed by and between counsel for the respective parties to the above entitled cause, that the portions of the record, proceedings and evidence to be included in the record of appeal are those which are listed in Items 1 to 31, both inclusive, of the Designation filed by the Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President; Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President, plaintiffs, and F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach and Fred Lewis, defendants, dated October 11, 1944.

It Is Further Stipulated that the appellees waive the requirements of Section 75-A of the Rules of Civil Procedure with reference to further notice of the filing of the Designation of the portions of the record.

Dated this 8th day of November, A. D. 1944.

V. C. Shuttleworth,
W. A. Endle,
E. L. Gordon,
Attorneys for Appellants.
Sidley, Austin, Burgess & Harper,
Attorney for Carrier Members of the Railroad Adjustment Board.
Poppenhusen, Johnston, Thompson & Raymond,
Attorney for Railroad Yardmasters of America, Intervener.
John A. Sheean,
Attorney for Southern Pacific Company.
Bryce L. Hamilton,
Attorney for Great Northern Railway Company.
Leo J. Hassenauer,
Attorney for Labor Members, National Railroad Adjustment Board.

327 And on the same day, to wit, the 9th day of November, 1944, came the appellants by their attorneys and filed in the Clerk's office of said Court their certain Designation of Portions of Record, Proceedings and Evidence to Be Included in Record on Appeal, in words and figures following, to wit:

328 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—3788) * *

DESIGNATION OF THE PORTIONS OF THE RECORD, PROCEEDINGS, AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECLARATORY JUDGMENT ENTERED ON JULY 20TH, 1944.

To the Honorable Roy H. Johnson, Clerk of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

The Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice President; Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President, plaintiffs above named, and F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, and Fred Lewis, defendants above named, as appellants hereby designate, pursuant to Rule 75-A of the Rules of Civil Procedure, for the District Courts of the United States, the complete record, proceedings, and evidence in the above entitled action to be included in the record of appeal from the Findings of Fact, Conclusions of Law, and Declaratory Judgment entered July 20, 1944, consisting of the following:

329 (1) Petition for Declaratory Judgment and exhibits thereto, filed January 12, 1942.

(2) Answer to Petition for Declaratory Judgment filed by F. J. Williams, et al, on February 2, 1942.

(3) Answer to Petition for Declaratory Judgment filed by E. W. Fowler, et al, February 9, 1942.

(4) Petition and motion of Railroad Yardmasters of America for leave to intervene as a party defendant, filed February 9, 1942.

(5) Order granting leave to Railroad Yardmasters of America to intervene and file answer and counterclaim, entered February 9, 1942.

(6) Answer and Counterclaim of Railroad Yardmasters of America, filed February 9, 1942.

(7) Order granting leave to Southern Pacific Company to intervene and file answer, entered March 9, 1942.

(8) Order granting leave to Great Northern Railway Company to file answer, entered March 9, 1942.

(9) Answer of Great Northern Railway Company, filed February 24, 1942.

(10) Answer of Southern Pacific Company, filed March 11, 1942.

(11) Order granting leave to plaintiffs to make members of the Fourth Division of National Railroad Adjustment Board additional parties defendant and file Amended Petition, entered April 10, 1942.

(12) Amendment to the Petition for Declaratory Judgment, filed April 10, 1942.

(13) Order granting leave to Great Northern Railway Company to file answer to petition as amended, entered April 22, 1942.

(14) Answer of Great Northern Railway Company to petition as amended, filed April 22, 1942.

(15) Answer of defendants, E. W. Fowler, et al, to petition as amended, filed April 16, 1942.

(16) Order granting leave to Southern Pacific Company to file instanter its supplemental answer to the Complaint as amended, filed May 8, 1942.

(17) Answer of Southern Pacific Company to petition as amended, filed May 8, 1942.

(18) Answer of E. J. Hamner, et al, filed June 10, 1942.

(19) Plaintiffs' reply to counterclaim of Railroad Yardmasters of America, filed October 30, 1942.

(20) Plaintiffs' reply to counterclaim of E. W. Fowler, et al, filed October 30, 1942.

330 (21) Stipulation of Facts, filed August 6, 1943.

(22) All exhibits filed.

(23) Transcript of Evidence.

(24) Memorandum opinion of Judge Holly, filed June 9, 1944.

(25) Order substituting certain defendants, entered July 12, 1944.

(26) Findings of Fact, Conclusions of Law, Declaratory Judgment, entered July 20, 1944.

(27) Notices of Appeal, with date of filing and proof of service.

(28) Appeal Bonds.

(29) Statement of points on which appellants rely.

(30) Designation of contents of record on appeal, with proof of service.

(31) Clerk's Certificate.

You are hereby requested to certify the complete record and all the proceedings and evidence in said action as set forth above, to the United States Circuit Court of Appeals, for the Seventh Circuit, within the time allowed by law.

Dated October 11th, 1944.

V. C. Shuttleworth,
W. A. Endle,
E. L. Gordon,
100 West Monroe St., Chicago, Illinois.
Attorneys for Plaintiffs.
Leo J. Hassenauer,
105 West Adams St., Chicago, Illinois.
Attorney for F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach and Fred Lewis, certain Defendants.

331 Northern District of Illinois, } ss.
Eastern Division. }

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designation filed in this court in the cause entitled: The Order of Railway Conductors of America, et al, *vs.* E. W. Fowler, et al, Civil Action No. 3788, consisting of the original documents filed of record and copies of orders as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office, in the City of Chicago, in said district, this tenth day of November, A. D. 1944.

Roy H. Johnson,
Clerk.

(Seal)

332 And to-wit, on the 28th day of November, 1944, the following further proceedings were had and entered of record, to-wit:

November 28, 1944.

8714-8715

(Caption)

Before: Hon. William M. Sparks, *Circuit Judge.*

It is ordered that the stipulation of counsel as to printing the record herein be, and it is hereby, approved.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of record, printed under my supervision and filed on the seventh day of May, 1945, in:

Cause Nos. 8714-8715.

The Order of Railway Conductors of America, H. W. Fraser, President and F. H. Nemitz, Senior Vice-President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President and S. R. Harvey, Assistant President,

Plaintiffs-Appellants,

vs.

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,

Defendants-Appellees.

F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, and Fred Lewis, individually, and as members of the National Railroad Adjustment Board,

Defendants-Appellants,

vs.

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,

Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 8th day of March, A. D. 1946.

(signed) Kenneth J. Carrick,
(seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the third day of October, in the year of our Lord one thousand nine hundred and forty-four, and of our Independence, the one hundred and sixty-ninth.

The Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice-President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President,
Plaintiffs-Appellants,

8714 *vs.*

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,
Defendants-Appellees.

F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, and Fred Lewis, Individually, and as members of the National Railroad Adjustment Board,
Defendants-Appellants,

8715 *vs.*

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,
Defendants-Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And, to-wit: On the fifteenth day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellants in Cause No. 8714, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8714.

The Order of Railway Conductors of America and Brotherhood of Railroad Trainmen,
Plaintiffs-Appellant,

vs.

O. E. Swan et al.,
Defendants-Appellees.

The Clerk will enter our appearance as counsel for Plaintiffs-Appellants.

V. C. Shuttleworth,
Cedar Rapids, Iowa.

W. A. Endle,
General Offices,
Cleveland, Ohio.

Everett L. Gordon,
100 W. Monroe St.,
Chicago, Illinois.

Endorsed: Filed November 15, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the fifteenth day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellants in Cause No. 8715 which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8715.

The Order of Railway Conductors of America and Brotherhood of Railroad Trainmen,
Plaintiffs-Appellants,

vs.

O. E. Swan, et al.,
Defendants-Appellees.

The Clerk will enter my appearance as counsel for F. J. Williams, William Bishop, Paul M. Carter, Fred Lewis and M. G. Leach, Defendants-Cross Appellants.

Leo J. Hassenauer,
38th Floor,
105 W. Adams St.,
Chicago (3), Illinois.

Endorsed: Filed November 15, 1944. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-second day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee in Cause No. 8714 which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8714.

The Order of Railway Conductors, *et al.*,
Plaintiffs-Appellants,

vs.

O. E. Swan, *et al.*,
Defendants-Appellees.

The Clerk will enter our appearance as counsel for O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, and L. O. Murdock, carrier members of First Division of N.R.A.B., and H. J. Reeser, J. W. Cox, and E. W. Fowler, carrier members of Fourth Division of N.R.A.B.

Kenneth F. Burgess,
11 S. La Salle St.,
Chicago 3, Ill.

Douglas F. Smith,
11 S. La Salle St.,
Chicago 3, Ill.

Robert Diller,
11 S. La Salle St.,
Chicago 3, Ill.

Endorsed: Filed November 22, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-second day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee in Cause No. 8715 which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8715.

F. J. Williams, *et al.*,
Defendants-Appellants,

vs.

O. E. Swan, *et al.*,
Defendants-Appellees.

The Clerk will enter our appearance as counsel for O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, and L. O. Murdock, carrier members of First Division of N.R.A.B., and H. J. Reeser, J. W. Cox, and S. W. Fowler, carrier members of Fourth Division of N.R.A.B.

Kenneth F. Burgess,
11 S. La Salle St.,
Chicago 3, Ill.

Douglas F. Smith,
11 S. La Salle St.,
Chicago 3, Ill.

Robert Diller,
11 S. La Salle St.,
Chicago 3, Ill.

Endorsed: Filed November 22, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-second day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee in Cause No. 8714 which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8714.

The Order of Railway Conductors, et al.,
Plaintiffs-Appellants,

vs.

O. E. Swan, et al.,
Defendants-Appellees.

The Clerk will enter our appearance as counsel for Great Northern Railway Company, Intervenor-Appellee.

R. J. Hagenan,
Great Northern Railway Bldg.,
St. Paul 1, Minnesota.

Hallan Huttman,
Great Northern Railway Bldg.,
St. Paul 1, Minnesota.

Bryce L. Hamilton,
1400 First National Bank Bldg.,
Chicago 3, Illinois.

Endorsed: Filed November 22, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-second day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee in Cause No. 8715 which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8715.

F. J. Williams, et al.,
Defendants-Appellants,

vs.

O. E. Swan, et al.,
Defendants-Appellees.

The Clerk will enter our appearance as counsel for Great Northern Railway Company, Intervenor-Appellee.

R. J. Hagman,
Great Northern Railway Bldg.,
St. Paul 1, Minnesota.

Hallan Huttman,
Great Northern Railway Bldg.,
St. Paul 1, Minnesota.

Bryce L. Hamilton,
1400 First National Bank Bldg.,
Chicago 3, Illinois.

Endorsed: Filed November 22, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-second day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee in Cause No. 8714 which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8714.

The Order of Railway Conductors, et al.,
Plaintiffs-Appellants,

vs.

O. E. Swan, et al.,
Defendants-Appellees.

The Clerk will enter our appearance as counsel for Southern Pacific Company, Intervenor-Appellee.

Burton Daron,
65 Market Street,
San Francisco 5, California.

John A. Sheean,
208 S. La Salle Street,
Chicago 4, Illinois.

Endorsed: Filed November 22, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-second day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee in Cause No. 8715, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8715.

F. J. Williams, et al.,
Defendants-Appellants,

vs.

O. E. Swan, et al.,
Defendants-Appellees.

The Clerk will enter our appearance as counsel for Southern Pacific Company, Intervenor-Appellee.

Burton Daron,
65 Market Street,
San Francisco 5, California.

John A. Sheean,
208 S. La Salle Street,
Chicago 4, Illinois.

Endorsed: Filed November 22, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-second day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee in Cause No. 8714, which said appearance is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Seventh Circuit.

The Order of Railway Conductors, et al., *Plaintiffs-Appellants, vs.* O. E. Swan, et al., *Defendants-Appellees.*	No. 8714.

APPEARANCE OF RAILROAD YARDMASTERS OF AMERICA, INTERVENOR-APPELLEE.

The undersigned hereby enters the appearance of Railroad Yardmasters of America, intervenor-appellee, as appellee in the above case and of himself as its attorney.

Anan Raymond,
Attorney for Intervenor-Appellee.

Poppenhusen, Johnston, Thompson & Raymond,
Of Counsel.

Endorsed: Filed November 22, 1944. Kenneth J. Carrick, Clerk.

An on the same day, to-wit: On the twenty-second day of November, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee in Cause No. 8715, which said appearance is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Seventh Circuit.

F. J. Williams, et al.,
Defendants-Appellants,
vs.
O. E. Swan, et al.,
Defendants-Appellees.
} No. 8715.

APPEARANCE OF RAILROAD YARDMASTERS OF AMERICA, INTERVENOR-APPELLEE.

The undersigned hereby enters the appearance of Railroad Yardmasters of America, intervenor-appellee, as appellee in the above case and of himself as its attorney.

Anan Raymond,
Attorney for Intervenor-Appellee.

Poppenhusen, Johnston, Thompson & Raymond,
Of Counsel.

Endorsed: Filed November 22, 1944. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the nineteenth day of October, 1945, the following further proceedings were had and entered of record, to-wit:

Friday, October 19, 1945.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

Order of Railway Conductors of America, H. W. Fraser, President and F. H. Menitz, Senior Vice-President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President,
Plaintiffs-Appellants,

8714 *vs.*

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,
Defendants-Appellees.

F. J. Williams, William Bishop, Paul M. Carter, J. J. Leach, and Fred Lewis, Individually, and as members of the National Railroad Adjustment Board,
Defendants-Appellants,

8715 *vs.*

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,
Defendants-Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. V. C. Shuttleworth and Mr. Leo Hassenauer, counsel for appellants, and by Mr. Douglas F. Smith and Mr. Anan Raymond, counsel for appellees, and the Court takes this matter under advisement.

And afterwards, to-wit: On the twenty-first day of December, 1945, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 8714, 8715. October Term and Session, 1945.

No. 8714.

The Order of Railway Conductors of America, H. W. Fraser, President, and F. H. Nemitz, Senior Vice-President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President,
Plaintiffs-Appellants,

vs.

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,
Defendants-Appellees.

No. 8715.

F. J. Williams, William Bishop, Paul M. Carter, M. J. Leach, and Fred Lewis, Individually, and as members of the National Railroad Adjustment Board,
Defendants-Appellants,

vs.

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,
Defendants-Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

December 21, 1945.

Before EVANS, SPARKS and KERNER, *Circuit Judges.*

SPARKS, *Circuit Judge.* Plaintiffs instituted this action under general federal equity jurisdiction, for a declaratory

judgment, pursuant to § 274d(1) of the Judicial Code, 28 U. S. C. A. § 400(1). They sought to have the First Division of the National Railroad Adjustment Board declared to have exclusive jurisdiction of disputes involving railroad yardmasters, within the terms and definitions of § 3(h) of the Railway Labor Act of May 20, 1926, as amended June 21, 1934. This Act created the National Railroad Adjustment Board for the adjustment of disputes between the carriers and their employees. It consists of thirty-six members, grouped in four divisions, and the Act provides that the proceedings of each division shall be independent. The constituency and jurisdiction of each division are fixed by the statute. 45 U. S. C. A. § 153(h). Only the first and fourth divisions are involved here.[1]

The only issue here involved is whether yardmasters shall be included in the first or fourth division. It is admitted that they can not be classified properly in either the second or third division, and if they can not be included in the first they must be included in the fourth division. The District Court held that they could not be classified properly in the first division, and assigned them to the fourth division. From that decree this appeal is prosecuted.

The decisive question here is whether yardmasters are "yard-service employees" as that term is used in the first division. Findings 7 to 13 inclusive are supported by substantial evidence and are as follows:

> 7. "Yardmasters and assistant yardmasters are not train-service or yard-service employees of rail carriers; that is to say, they are not engineers, firemen, hostlers, outside hostler helpers, conductors, trainmen, or yard-service employees.
>
> 8. "The terms 'yard service' and 'yard-service employees' are not terms in general and common usage in the English language.
>
> 9. "The terms 'yard service' and 'yard-service employees' are and have been for many years, both

1. "First Division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. • • •."

"Fourth Division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second and third divisions. • • •."

prior and subsequent to the amendment of the Railway Labor Act in 1934, technical terms in railroad usage, with definite meanings clearly understood by persons familiar with that usage.

10. "The term 'yard-service employees,' as used in Section 3 First (h) of the Railway Labor Act with reference to the jurisdiction of the First Division of the National Railroad Adjustment Board, was taken by Congress from railroad usage and was introduced into the said statute upon its amendment in 1934 as a railroad term having the meaning customarily assigned to it in railroad parlance.

11. "At the time of the amendment to the Railway Labor Act referred to in the preceding paragraph 10, for many years prior thereto, and since that time, the term 'yard-service employees' referred, and has referred, solely to railroad employees engaged in making up and breaking up trains and switching trains and cars within yard limits. Over the same period of time the term 'yard service' has denoted the work performed by such employees, who include engineers, firemen, conductors or engine foremen, yard brakemen or switchmen, and switchtenders.

12. "During the period of time referred to in the preceding paragraph 11, the terms 'yard service' and 'yard work' have been synonymous and have been used interchangeably in railroad parlance, and the terms 'yard-service employees' and 'yard men' have been synonymous and used interchangeably in railroad parlance.

13. "Railroad usage, as evidenced by the testimony of experienced railroad officials and representatives of railroad employees, has never included yardmasters and assistant yardmasters within the meaning of the terms 'yard-service employees' or 'yard men,' and yardmasters and assistant yardmasters have never been regarded as yard-service employees or yard men."

A study of this record convinces us that the District Court, in holding that yardmasters were not included in Division 1, did not give to the Act a strained or narrow interpretation contrary to the meaning of its terms. In support of their contention to the contrary, plaintiffs rely on *Federal Trade Commission* v. *Bunte Brothers, Inc.*, 312 U. S. 349, and *United States* v. *Cooper Corporation*, 312

U. S. 600. In both of those cases the court declined to extend the terms there used beyond their natural and ordinary meaning, and that is precisely the thing that was done in the case at bar. The testimony of all the witnesses did not differ materially with respect to the definition of "yard-service employees" as used by those engaged in the railroad business, and the court's finding adopted that definition. True, plaintiffs' one witness stated: "I would say that they (yardmasters) fit more nearly in with the yard-service employees than with any other class." However, he did not deny the accuracy of the definition of the terms "yard-service employees" as given by all other witnesses testifying on this subject. Of course, the construction of a statute involves a question of law. However, the definitions of words, either common or technical, involve questions of fact, and we are bound by the court's findings as to the definitions if they are supported by substantial evidence.

Aside from the testimony of witnesses on this subject, plaintiffs contend that the court erred in failing to give any weight to the historical alignment of yardmasters with the train and yard-service crafts in the settlement of disputes before boards of adjustment.

During the period of federal control of railroads (1918-1920), the basis of Railway Board of Adjustment No. 1, was an agreement between the regional directors of the railroads, and representatives of four labor organizations of railway conductors, railroad trainmen, locomotive engineers, and locomotive firemen and enginemen. A similar agreement was made by the regional directors and representatives of six labor organizations of shop employees, and this constituted the basis for Board of Adjustment No. 2. A like agreement was made with four labor organizations: Switchmen, Railroad Telegraphers, Railway Clerks, and Maintenance-of-way employees, which was the basis for Board of Adjustment No. 3. The jurisdiction of each board was to adjust personal grievances or controversies arising under interpretation of wage agreements, and all other disputes arising between officials of the railroad and its employees, covered by the several respective agreements. Thus no provision was made for submission of disputes of employees who did not belong to one of the organizations named in the agreements. However, provision for adjustment of the disputes of such employees

was made by Circular No. 3 of the Division of Labor of the United States Railroad Administration, which contained the following paragraph:

> "(c) When employees are represented by Railway Boards of Adjustment, the procedure as to all controversy within the scope of their duties will be as directed in general orders creating such boards. The fact that certain employees are not represented by Railway Boards of Adjustment will in no manner deprive them of any of the benefits accruing from such boards. An assistant to the Director * * * has been appointed, and a staff of representatives has been organized, for the * * * purpose of rendering the same service to such employees as though represented by a Railway Board of Adjustment. * * *"

This circular further provided for the method of handling requests for adjustments in wages by employees not represented by Railway Boards of Adjustment and personal grievances or controversies arising under the interpretation of wage agreements and all other disputes arising between officials of a railroad and its employees not represented by Railway Boards of Adjustment. If not settled on the property, such disputes were referable to the Director of the Division of Labor of the United States Railroad Administration.

During this period the disputes of yardmasters were referable to no less than three separate adjustment bodies, national in scope. If a yardmaster belonged to one of the four brotherhoods represented on Board No. 1, he went to that Board; if he belonged to the Switchmen's Union, he went to Board No. 3; but if he belonged to an organization not represented on one of the three boards, or to no labor organization, he went to a special staff in the Division of Labor.

Jurisdiction to hear and decide all disputes during this period, those of yardmasters, yard-service employees, and all other employees, depended not upon a classification according to crafts or jobs, as it does now, but upon labor representation.

The Transportation Act of 1920 superseded the arrangements set up during the period of federal control. Under this Act, adjustment boards were authorized to be created by agreement. The jurisdiction of such boards extended

only to the disputes of employees represented on that board. Neither the Switchmen's Union, nor the Railroad Yardmasters of America were parties to any of those agreements and if any of their disputes were heard by those boards it was due solely to the fact that such member or members happened to hold membership in the signatory labor organizations, and such jurisdiction was not based on a classification of work or crafts, nor was it based on any administrative interpretation of the term "yard-service employees" as including yardmasters. The adjustment jurisdiction of the Labor Board was confined neither to the disputes of specified crafts only, nor to the disputes of any particular labor organization. The Labor Board was directed to hear and decide any dispute involving grievances, rules, or working conditions on which an adjustment board had deadlocked, if the adjustment board certified the deadlock to the Labor Board. The Labor Board was also authorized to act on its own motion in case it determined that an adjustment board had deadlocked or failed to consider a dispute with due diligence, and it was authorized to handle disputes in the first instance in cases where an appropriate adjustment board had not been organized.

The Railway Labor Act of 1926 also directed that boards of adjustment should be created by agreement, and such agreement was required to specify the group or groups covered by the adjustment board.

That Act also authorized individual carriers and their employees to enter into adjustment agreements, and under this Act, boards previously established were continued, and the number of such boards was increased; under it, as under the previous Act, the only yardmasters' and yard-service employees' disputes heard by such adjustment boards were those of members of the four brotherhoods. Large numbers of yard-service employees, such as those belonging to the Switchmen's Union, were not subject to the jurisdiction of the Train Service Boards of Adjustment, because they had no membership in the signatory unions, and for the same reason only a few of the yardmasters were subject to that jurisdiction.

Under the Act of 1934, the jurisdiction of the Adjustment Board is not determined by representation or left to agreement; it is defined strictly in terms of disputes involving specified classes of employees, regardless of the

labor affiliations of the members of the several classes. Under the present law, the several divisions of the National Adjustment Board were not created by signed agreement, but by statute which contains not a word to imply that the Order of Railway Conductors and the Brotherhood of Railroad Trainmen may, or that the members of the Railroad Yardmasters must submit their disputes to the First Division.

In view of these facts we think the District Court was correct in concluding that the historical alignment of yardmasters with the train and yard-service crafts in the settlement of disputes is not helpful in determining the question now before us.

Plaintiffs further contend that the court erred in failing to give weight to the contemporaneous administrative interpretation of the Adjustment Board. In support of that contention they rely on nineteen decisions of that Board, only three of which, we think, relate to disputes involving yardmasters in the proper sense of that term. In one, a yardmaster complained of wrongful demotion to a yardman position; in another he complained of wrongful discharge; and in another he complained of wrongful displacement by another yardmaster, claiming rate of payment under one agreement rather than another. In none of these awards was there any discussion of the jurisdictional question depending upon the interpretation of "yard-service employees." The award merely recited, as in all awards: "This Division of the Adjustment Board has jurisdiction over the dispute involved herein."

Whenever the question involved in this case has been given specific attention the First Division has deadlocked. The labor members wished to accept yardmaster cases, and carrier members refused. In the Fourth Division, except as we shall note, the carrier members favored taking yardmasters' cases, and the labor members objected, and this situation has existed for a considerable length of time, and for this reason the present suit was instituted.

The exception last above noted was a case in which a petition for mandamus was filed by the Railroad Yardmasters of America against members of the Fourth Division, and prayed that an order be entered commanding them to hear and determine certain disputes mentioned in the petition. Summons was issued, the defendants appeared and filed answer admitting they were members of

the Fourth Division, and that they were of the opinion that said Division had jurisdiction of such disputes. The decree enjoined and commanded the Fourth Division to docket, order the determination and enter awards on three *ex parte* submissions involving yardmasters theretofore filed with the Fourth Division. That decree was entered by Judge Holly without argument and without information that there was a public question involved or that anyone aside from the parties had any interest in the question then presented. It is noted here only for the reason that the Railroad Yardmasters of America, intervenor here, contends that the decree in that case is *res adjudicata* of the issues now presented, and asks that the decree now before us be affirmed. We think the District Court ruled correctly in holding it was not *res adjudicata* as to the issues now presented.

Under the facts related we are of opinion that the alleged contemporaneous administrative interpretation adds no weight to plaintiffs' contention. Administrative interpretation is resorted to only when the statute is ambiguous. *United States* v. *Missouri Pacific R. Co.*, 278 U. S. 269; *Koshland* v. *Helvering*, 298 U. S. 441. In cases where it is proper to consider, there must have been definite and unequivocal administrative action on a question of the type under consideration, and it must be authoritative in character, uniform, consistent, and long-continued. *United States* v. *Missouri Pacific R. Co., supra; Higgins* v. *Commissioner*, 312 U. S. 212; *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1; and *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627. An administrative interpretation contrary to the plain meaning of the statute, though of long standing, is never accepted by the courts. *Texas & Pacific Ry. Co.* v. *United States, supra; Koshland* v. *Helvering, supra; Estate of Sanford* v. *Commissioner*, 308 U. S. 39; and *City Bank Farmers Trust Co.* v. *Helvering*, 313 U. S. 121.

Plaintiffs further contend that the trial court erred in failing to give weight to the failure of Congress to amend the Railway Labor Act. At two different times a bill was introduced into Congress to amend the Railway Labor Act in such manner as to exclude yardmasters' disputes from the jurisdiction of the First Division. Both bills went to the Committee and were never reported out. Whether their demise by that method was due to the fact that the Committee thought they were undesirable or un-

necessary we are not informed, and no presumption arises as to the cause.

Decree AFFIRMED.

Endorsed: Filed December 21, 1945. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-first day of December, 1945, the following further proceedings were had and entered of record, to-wit:

Friday, December 21, 1945.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

The Order of Railway Conductors of America, H. W. Fraser, President and F. H. Nemitz, Senior Vice-President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President, and S. R. Harvey, Assistant President, *Plaintiffs-Appellants;*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
8714 *vs.*	
O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox, *Defendants-Appellees.*	

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause appealed from be, and the same is hereby affirmed, with costs.

And on the same day, to-wit: On the twenty-first day of December, 1945, the following further proceedings were had and entered of record, to-wit:

Friday, December 21, 1945.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

F. J. Williams, William Bishop, Paul M. Carter, J. J. Leach, and Fred Lewis, Individually, and as members of the National Railroad Adjustment Board,
Defendants-Appellants,

8715 *vs.*

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,
Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause appealed from be, and the same is hereby, affirmed, with costs.

And afterwards, to-wit: On the twenty-fourth day of January, 1946, the mandate of this Court in cause No. 8714 issued to the District Court of the United States for the Northern District of Illinois, Eastern Division.

And on the same day, to-wit: On the twenty-fourth day of January, 1946, the mandate of this Court in cause No. 8715 issued to the District Court of the United States for the Northern District of Illinois, Eastern Division.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Garrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of proceedings had and papers filed excepting briefs of counsel and motion and orders extending time for briefs, in:

Cause Nos. 8714-8715.

The Order of Railway Conductors of America, H. W. Fraser, President and F. H. Nemitz, Senior Vice-President; and Brotherhood of Railroad Trainmen, A. F. Whitney, President and S. R. Harvey, Assistant President,

Plaintiffs-Appellants,

vs.

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,

Defendants-Appellees.

F. J. Williams, William Bishop, Paul M. Carter, J. J. Leach, and Fred Lewis, individually, and as members of the National Railroad Adjustment Board,

Defendants-Appellants,

vs.

O. E. Swan, T. K. Faherty, R. A. Knoff, L. L. McDonald, L. O. Murdock, H. J. Reeser, J. W. Cox, E. W. Fowler, R. A. Walton, W. O. Holmes and J. M. Fox,

Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit at the City of Chicago, this 8th day of March, A. D. 1946.

(seal)

(signed) Kenneth J. Garrick
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 63

ORDER ALLOWING CERTIORARI—Filed April 22, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 64

ORDER ALLOWING CERTIORARI—Filed April 22, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.